



# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**TRAINING, SEVIS, AND NSEERS: WILL THEY STOP  
TERRORISTS FROM ENTERING THE U.S.?**

by

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March 2007

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ENTERING THE U.S.?**

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## ABSTRACT

In order to commit attacks against the U.S. homeland, terrorists must enter the country. Stopping their entry is key to preventing attacks. The 9/11 Commission's Staff Report of the National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel*, identified pre-9/11 gaps/weaknesses in U.S. immigration, visa, customs, and border security systems. This thesis will consider the implementation of the 9/11 Commission's key recommendations for immigration: 1) provide standardized operational training and additional guidance to immigration, visa, and customs personnel, 2) establish a foreign student visa compliance and tracking system, the Student and Exchange Visitor Information System, (SEVIS), and 3) develop and implement the National Security Exit and Entry Registration System (NSEERS). This thesis will also assess the effectiveness of these policies as counterterror measures to determine if they can stop terrorists from entering the U.S. Bruce Schneier's *Beyond Fear: Thinking Sensibly About Security in an Uncertain World* provides a five-step model to analyze and evaluate security systems, technologies, and countermeasures. His model will be applied to assess the implementation/effectiveness of the three key recommendations. To effectively establish priorities and efficiently allocate resources, policymakers require assessments of implemented homeland security recommendations. This thesis offers such an assessment.

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# **I. INTRODUCTION**

## **A. BACKGROUND**

9/11 alerted the U.S. The homeland was no longer immune to terrorist attacks. America did not stop terrorists from crossing its borders, traveling within its interior, and committing suicide attacks. In order to commit attacks against the U.S. homeland, terrorists have to enter the country. Stopping their entry is key to preventing attacks. The events of 9/11 made a fact unequivocally and painfully evident: “the entry of the hijackers into the United States therefore represented the culmination of years of experience in penetrating international borders.”<sup>1</sup> The nineteen 9/11 hijackers capitalized on gaps and weaknesses inherent in U.S. immigration, visa, customs, and border security systems. Because of these gaps/weaknesses, the nineteen terrorists were granted entry into the U.S. More importantly, the U.S. missed crucial opportunities to exploit vulnerabilities of terrorist travel and mobility. Pre-9/11 immigration, visa, customs, and border security systems were not designed to exploit terrorist travel and mobility vulnerabilities.

The Staff Report of the National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel*, identified pre-9/11 gaps and weaknesses in U.S. immigration, visa, customs, and border security systems. *9/11 and Terrorist Travel* specified three major gaps/weaknesses: 1) marginal immigration, visa, and customs personnel training, 2) ineffective foreign student visa compliance tracking, and 3) nonexistent national entry-exit system.<sup>2</sup> This thesis will consider the implementation of the 9/11 Commission’s key recommendations for immigration: 1) provide standardized operational training and additional guidance to immigration, visa, and customs personnel, 2) establish a foreign student visa compliance and tracking system, the Student and Exchange Visitor Information System, (SEVIS), and 3) develop and implement the National Security Exit and Entry Registration System (NSEERS).<sup>3</sup> This thesis will also

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<sup>1</sup> Staff Report of the National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel* (Tennessee: Hillsboro Press, 2004), 3.

<sup>2</sup> Ibid., 98, 100, 136, 137.

<sup>3</sup> *9/11 and Terrorist Travel*, 149, 164, 155.

asses the effectiveness of these policies as counterterror measures to determine if they can stop terrorists from entering the U.S.

The Department of Homeland Security is now home to “most of the policy and implementation functions of the former Immigration and Naturalization Service (INS).”<sup>4</sup> A component of the U.S. response to the events of 9/11 was political, organizational, and bureaucratic. America subordinated immigration policy to terrorism policy.<sup>5</sup> This change was institutionalized by the “break-up of the [Immigration and Naturalization Service] INS and the reallocation of its functions to the DHS” and the DHS establishment of three new bureaus with immigration responsibilities: Bureau of Citizenship and Immigration Services (USCIS), Bureau of Immigration and Customs Enforcement (ICE), and Bureau of Customs and Border Protection (CBP) following the enactment of the Homeland Security Act of 2002.<sup>6</sup>

These three newly realigned and restructured bureaus along with the U.S. Department of State Bureau of Consular Affairs serve as the first line or “perimeter” defense against terrorist attacks.<sup>7</sup> Front line immigration, visa, and customs officials who comprise the first line of defense must be trained in order to implement counterterrorism measures designed to stop terrorists from entering the country. They must be trained to recognize missed and dismissed indicators. They must be compliant in and accountable for the execution of their duties. They must follow the rules to affect terrorist capability and to bolster our defenses. In order to enhance their ability to follow the rules, they must have automated tools that leverage technology.

Automated tools/databases have been established: a foreign student visa compliance tracking system (SEVIS) and a national entry-exit system (NSEERS). SEVIS automated an existing manual data collection process and became operational for

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<sup>4</sup> Megan Davy, Deborah W. Meyers, and Jeanne Batalova, “Who Does What in US Immigration,” *Migration Information Source*, 1 December 2005, <http://www.migrationinformation.org/USfocus/display.cfm?id=362> (accessed 4 October 2006), 1.

<sup>5</sup> Karen C. Tumlin, “Suspect First: How Terrorism Policy is Reshaping Immigration Policy,” *California Law Review* 92 (July 2004), 1174.

<sup>6</sup> Susan Martin and Philip Martin, “International Migration and Terrorism,” *Georgetown Immigration Law Journal* 18 (2004), 330.

<sup>7</sup> Michael E. O’Hanlon, et al., *Protecting the American Homeland* (Washington, D.C.: Brookings Institution Press, 2002), 14.

all incoming foreign students on 15 February 2003.<sup>8</sup> The INS created this foreign student monitoring system and established a process for educational institutions 1) to have their SEVIS certification completed and 2) to electronically report information on all new and continuing students into the SEVIS.<sup>9</sup> SEVIS addresses the specific challenges that students present to homeland security efforts: “It is difficult for DHS to know when foreign students have overstayed because the duration of status lacks a fixed termination date, and schools, although required to report students who stop attending, have not been required until recently to systematically report data on the progress of foreign students.”<sup>10</sup> SEVIS was designed to track visitors and their dependents with F (academic and language student), M (vocational student), and J (exchange visitor)<sup>11</sup> classes of temporary/nonimmigrant visas.<sup>12</sup> In Fiscal Year 2005, Consular Affairs issued a total of 565,790 temporary/nonimmigrant foreign student and exchange visitor visas: 255,993 F,

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<sup>8</sup>Alison Siskin, “Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS),” *CRS Report for Congress*, 20 October 2005, <http://fpc.state.gov/documents/organization/44016.pdf> (accessed 7 September 2006), 1.

<sup>9</sup> Ibid., 3.

<sup>10</sup> Chad Christian Haddal, “Foreign Students in the United States: Policies and Legislation,” *CRS Report to Congress*, 11 October 2006, <http://www.fas.org/sgp/crs/homesec/RL31146.pdf> (accessed 5 November 2006), 4-5. Nonimmigrant foreign students are processed by four different federal agencies during their tenure as applicants to and foreign students at U.S. higher education institutions. The first encounter will be with the Department of State (DOS), which conducts the applicant interviews and either grants or rejects the visa applications. Once a nonimmigrant arrives at a U.S. port of entry, the individual receives an inspection by CBP. The student’s arrival is reported to the ICE for entry into SEVIS. After entry, the alien’s academic institution is responsible for reporting information to the SEVIS database. The SEVIS information is then shared with DOS, CBP, and USCIS.

<sup>11</sup> Ibid., 2- 4. The M visa is the least used of three foreign student visa categories. Exchange visitors on a J visa (also referred to as the Fulbright program) are admitted for the purpose of cultural exchange. These visitors include scholars, professors, teachers, trainees, specialists, foreign medical graduates, international visitors, au pairs, and participants in student/travel work programs.

<sup>12</sup> Jessica Vaughan, “Shortcuts to Immigration: ‘The Temporary’ Visa Program is Broken,” January 2003, <http://www.cis.org/articles/2003/back103.pdf> (accessed 19 September 2006), 2. F and M class foreign student and J class exchange visitor visas have different lengths of “maximum stay,” or Duration of Status (D/S). The maximum stay limits for F class (academic and language student) visas is the duration of study, plus 12 months for “Optional Practical Training” Work. The maximum stay limit for M class (vocational student) visas is one year course of study plus 30 days, plus 6 months “Optional Practical Training” Work. The maximum stay for J class (exchange visitor) visas is one year of course of study plus 30 days, plus 6 months “Optional Practical Training” Work. The additional 60 and 30 days are intended for departure preparations from the U.S. In the case of F visa holders, 60 days can also be used to transfer to another school. U.S. Department of State Bureau of Consular Affairs, “Student Visas,” June 2006, [http://travel.state.gov/visa/temp/types/types\\_1268.html](http://travel.state.gov/visa/temp/types/types_1268.html) (accessed 10 November 2006), 5. “Optional Practical Training” is a type of on-campus work-study program which relates to the specific degree program, such as paid research and teaching assistantships. Nonimmigrants who possess an F visa are generally not allowed to engage in off-campus employment. For example, F students who accept off-campus employment violate the terms of their visas and are subject to removal and other penalties. Haddal, 2.

5,975 M, and 303,822 J visas.<sup>13</sup> The number of foreign and exchange student admissions with dependents total 1,046,421 for 2005. 654,973 are F class admissions, 8,985 are M class admissions, and 382,463 are J class admissions.<sup>14</sup> The disparity between the totals of issued visas and admissions is due to the travel pattern and documentation of multiple entries/admissions of foreign students and exchange visitors.<sup>15</sup> Upon each entry/admission, the student must submit an Arrival-Departure Record, or DHS Form I-94. Therefore, the number of admissions exceeds the total number of individual visitors and the total number of visas issued.<sup>16</sup> According to 2005 figures, SEVIS should account for 10.5% of the total temporary/nonimmigrant visas that are issued (5,388,937). SEVIS and NEESRS track a targeted subset of the total temporary/nonimmigrant population.<sup>17</sup>

NSEERS was developed to track the entry and exit of temporary/nonimmigrant foreign nationals representing “predominantly Arab and Muslim countries”<sup>18</sup> to include foreign student and exchange visitors. The total number of temporary/nonimmigrant visas issued for 2005 was 5,388,937.<sup>19</sup> Due to multiple entries/exits, the total number of temporary/nonimmigrant visitor admissions for 2005 was recorded at 32 million.<sup>20</sup> NSEERS enables the “the U.S. government [to] keep track of the more than 35 million nonimmigrant visitors who enter the United States as well as some nonimmigrant visitors already in the United States.” Visitors are required to register with immigration authorities either at a port-of-entry or a designated ICE office.<sup>21</sup>

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<sup>13</sup> U.S. Department of State Bureau of Consular Affairs, “Table XVI (A), Classes of Nonimmigrants Issued Visas (Including Crewlist Visas and Border Crossing Cards): Fiscal Years 2001-2005,” *Report of the Visa Office*, Visa Statistics, <http://travel.state.gov/pdf/FY05tableXVIa.pdf> (accessed 10 November 2006), 1.

<sup>14</sup> Elizabeth M. Grieco, “Temporary Admissions of Nonimmigrants to the United States: 2005,” *Office of Immigration Statistics Annual Flow Report*, July 2006, [http://www.uscis.gov/graphics/shared/statistics/publications/2005\\_NI\\_rpt.pdf](http://www.uscis.gov/graphics/shared/statistics/publications/2005_NI_rpt.pdf) (accessed 5 September 2006), 3.

<sup>15</sup> *Ibid.*, 5.

<sup>16</sup> *Ibid.*, 1.

<sup>17</sup> *9/11 and Terrorist Travel*, 155.

<sup>18</sup> *Ibid.*, 155.

<sup>19</sup> U.S. Department of State Bureau of Consular Affairs, “Table I, Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts: Fiscal Years 2001-2005,” *Report of the Visa Office*, Visa Statistics, <http://travel.state.gov/pdf/FY05tableI.pdf> (10 November 2006), 1.

<sup>20</sup> Grieco, 1.

<sup>21</sup> U.S. Immigration and Customs Enforcement, “Special Registration,” Public Information, <http://www.ice.gov/pi/specialregistration/index.htm> (accessed 10 November 2006), 1.



According to *9/11 and Terrorist Travel*, “the INS implemented the National Security Exit and Entry Registration System at selected ports of entry” on the one year anniversary of 9/11. NSEERS mandated the following:

1. Photographing, fingerprinting, and interviewing of foreign nationals from a total of twenty-five predominantly Arab and Muslim countries upon their arrival in the U.S.
2. Required the same kind of registration for such individuals already in the U.S.
3. These individuals must be reinterviewed 30 days after their entry to the U.S., notify the INS if they changed their address, present themselves for an annual interview if they remained inside the U.S., and have an interview when they depart the U.S.
4. Enforcement measures against those who were found to be in violation of immigration or other laws when they sought to register or who violated program rules (for example, failing to register at all).<sup>22</sup>

With the dissolution of INS, ICE assumed implementation and oversight responsibilities of both SEVIS and NSEERS.<sup>23</sup> The SEVIS and NSEERS databases must be populated with accurate and current information. This information is shared amongst several sources: law enforcement, intelligence agencies, and other countries. In order to enhance data sharing efforts, immigration, visa, and customs officials must have access to law enforcement databases, intelligence agencies must be cooperative, and visa admission policies and procedures must be coordinated with other countries. Of course, the technological tools should not be divorced from the human element. A system of quality checks by supervisors and secondary inspectors must also be incorporated.

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<sup>22</sup> *9/11 and Terrorist Travel*, 155.

<sup>23</sup> Ruth Ellen Wasem, “Toward More Effective Immigration Policies: Selected Organizational Issues,” *CRS Report for Congress*, 17 March 2006, <http://www.hlswatch.com/sitedocs/RL33319.pdf> (accessed 7 September 2006), 10 and 13.

## **B. AN ASSESSMENT MODEL: SCHNEIER'S FIVE-STEP MODEL**

Bruce Schneier's *Beyond Fear: Thinking Sensibly About Security in an Uncertain World* provides a five-step model to analyze and evaluate security systems, technologies, and countermeasures.<sup>24</sup>

**Step 1: What assets are you trying to protect?**

**Step 2: What are the risks to these assets?**

**Step 3: How well does the security solution mitigate the risk?**

**Step 4: What other risks does the security solution cause?**

**Step 5: What trade-offs does the security solution require?**<sup>25</sup>

His model will be applied to assess the post-9/11 implementation and effectiveness of the three recommendations, or “security solutions.”

Schneier advises us to look beyond fear when analyzing security solutions. He proposes we rationally ask the question: what are we trying to achieve? We cannot secure every inch of the 7,514-mile U.S. Canada/Mexico border and the 12,380 miles of coastline due to resource constraints and competing priorities. What countermeasures/policy options will therefore take priority? Which priorities will be allocated the limited resources (people, money, and time)? Most importantly, we must inquire: if we do not achieve our objectives, was it worth the resource and trade-off costs? With the resources that have been allocated to the immigration, visa, customs, and border security systems, the first line or “perimeter” of defense, we must ensure the most important resource—the people—are trained. Immigration, visa, and customs personnel must have the right technological tools and databases, intelligence and law enforcement information, and coordination from other countries.<sup>26</sup> The 9/11 Commission asserts,

Before 9/11, no executive department had, as its first priority, the job of defending America from domestic attack. That changed with the 2002 creation of the Department of Homeland Security. This department now has the lead responsibility for problems that feature so prominently in the 9/11 story, such as protecting borders....Throughout the government,

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<sup>24</sup> Bruce Schneier, *Beyond Fear: Thinking Sensibly About Security in an Uncertain World* (New York: Copernicus Books, 2003), 14.

<sup>25</sup> Ibid., 233-245.

<sup>26</sup> O'Hanlon, et al., *Protecting the American Homeland*, 14.

nothing has been harder for officials—executive or legislative—than to set priorities, making hard choices in allocating limited resources.<sup>27</sup>

### C. PURPOSE

The U.S. has finite resources, yet there are limitless homeland security requirements, programs, and policies that compete for funding. Assessing the post-9/11 implementation and effectiveness of three key recommendations is essential. Determining their value as counterterror measures is required for establishing priorities and allocating resources for U.S. homeland security. Stopping terrorist entrance is a top priority for the U.S. Schneier's five-step model will prove indispensable in assessing the implementation and effectiveness of the key recommendations, or "security solutions." By addressing the model's steps, this thesis will answer the question: Do the ends of training, SEVIS, and NSEERS justify their means? The ends of their implementation are defined by their effectiveness/ability to stop terrorists. The means to implement them are their prioritization, resource allocation, and costs/trade-offs.

To effectively establish priorities and efficiently allocate resources, policymakers and officials require effectiveness assessments of implemented homeland security recommendations. By offering such an assessment, this thesis would be relevant to and utilized by policymakers and immigration, visa, and customs officials who must prioritize countermeasures and allocate resources. By barring terrorist entrance into the U.S., we take away one of their most important weapons—their freedom—to travel, enter, and attack. By denying their freedoms, we guarantee the freedoms of American citizens and even noncitizens to life and liberty. Eli Lehrer argues that barring potential terrorists from entering the country is a control mechanism that serves as one of the three basic tenets of homeland security:

When a nation seeking to protect itself finds diplomacy, war, and foreign intelligence gathering insufficient, it can undertake three other types of activities to defend itself. It can **control the movement of potential terrorists entering the country or traveling within it**; it can capture or neutralize terrorist plotters within its borders; and when all else fails, it can mitigate damage from terrorist attacks. These three activities--**access control**, law enforcement, and disaster mitigation--comprise the essentials of homeland security. Congress and the Bush administration have

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<sup>27</sup> Final Report of the National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (New York: W.W. Norton & Company, 2004), 395.

consolidated many federal efforts to accomplish these three tasks in the Department of Homeland Security (DHS). In so doing they hope to protect the nation from future terrorist attacks.<sup>28</sup>

#### **D. FACT-BASED ASSUMPTIONS**

One assumption of this thesis is that terrorists will exploit legal means of entering the U.S. to not raise suspicion and to ensure long-term operational stability.<sup>29</sup> The second assumption is that terrorists prefer to use temporary/nonimmigrant visas (NIVs) (i.e., student, visitor, business). Michael Welch surmises that at least 15 of the 19 terrorists entered the country legally on some form of temporary visa.<sup>30</sup> Both of these assumptions seem validated by the travel patterns of the 9/11 hijackers. The 9/11 Commission reveals,

As we know from the sizable illegal traffic across our land borders, a terrorist could attempt to bypass legal procedures and enter the United States surreptitiously. None of the 9/11 attackers entered or tried to enter our country [illegally]...we will focus on the hijackers' exploitation of legal entry systems.<sup>31</sup>

Terrorist preference for legal means can be traced to the motivations and modes demonstrated a decade before the events of 9/11: "Because terrorist operations were not

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<sup>28</sup> Eli Lehrer, "The Homeland Security Bureaucracy," *The Public Interest* 156 (Summer 2004), 71. [emphasis added]

<sup>29</sup> Janice L. Kephart, "Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel," *Center for Immigration Studies Center Paper* 24, September 2005, <http://www.cis.org/articles/2005/kephart.pdf> (accessed 9 April 2006), 7. In a Center for Immigration Studies report, Janice Kephart presents the immigration histories of 94 terrorists who operated in the U.S. between the early 1990s and 2004, including six of the 9/11 hijackers. She also emphasizes the importance of legality to terrorists: "They all had to travel to the United States...Few had difficulty getting [in]....What requires emphasis is the ease with which the terrorists have moved through U.S. border security...The security gaps that existed then still...exist today....Once within the U.S. borders, terrorists seek to stay. Doing so with the appearance of legality helps ensure long-term operational stability."

<sup>30</sup> Michael Welch, *Detained: Immigration Law and the Expanding I.N.S. Jail Complex* (Philadelphia: Temple University Press, 2002), 188.

<sup>31</sup> National Commission on Terrorist Attacks Upon the United States, "Entry of the 9/11 Hijackers Into the United States," Staff Statement #1, Seventh Public Hearing Archive, 26 January 2004, [http://www.9-11commission.gov/staff\\_statements/staff\\_statement\\_1.pdf#search=%22none%20of%209%2F11%20terrorists%20%22](http://www.9-11commission.gov/staff_statements/staff_statement_1.pdf#search=%22none%20of%209%2F11%20terrorists%20%22) (accessed 2 September 2006), 8. The 9/11 Commission adds to the legality discussion present in the literature: "A review of...the hijackers paints a picture of conspirators who put the ability to exploit U.S. border security while not raising suspicion about their terrorist activities high on their operational priorities....Mohamed Atta...was acutely aware of his immigration status [and] tried to remain in the [U.S.] legally." *9/11 and Terrorist Travel*, 130.

suicide missions in the early to mid-1990s, once in the United States terrorists and their supporters tried to get legal immigration status that would permit them to remain here.”<sup>32</sup>

Three studies corroborate these assumptions. Terrorists prefer to exploit legal immigration, visa, and customs systems by obtaining temporary/nonimmigrant visas. Steven Camarota’s data set was comprised of 48 foreign-born militant Islamic terrorists that have been charged, convicted, pled guilty, or admitted to involvement in terrorism within the U.S. in the period from 1993 to 2001. All had linkages to Al Qaeda. At the time the terrorists committed their crimes, 33% (16 of 48) of them were on temporary visas.<sup>33</sup> Janice Kephart’s study of 94 terrorists who operated in the U.S. between the early 1990s and 2004 echoes these assumptions:

Temporary visas were a common means of entering; 18 terrorists had student visas and another four had applications to study in the United States. At least 17 used a visitor visa – either tourist (B2) or business (B1)...In at least 13 instances, terrorists overstayed their visas.<sup>34</sup>

The Migration Policy Institute commissioned Task Force on Immigration and America’s Future reasons that terrorists “are unlikely to risk their lives or operations crossing through the desert or entrusting themselves to smugglers.”<sup>35</sup> What terrorists are likely to do is enter through legal channels by using fraudulent travel documents (i.e., passports, visas, entry-exit stamps, and secondary identification).<sup>36</sup> Exploiting legal entry systems and using temporary visas offers the most expeditious and civil path of least resistance. Immigration, visa, and customs officials and policymakers have been

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<sup>32</sup> 9/11 and Terrorist Travel, 49.

<sup>33</sup> Steven A. Camarota, “The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001,” *Center for Immigration Studies Center Paper #21*, May 2002, <http://www.cis.org/articles/2002/theopendoor.pdf> (accessed 9 August 2006), 5-6.

<sup>34</sup> Kephart, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel,” 2.

<sup>35</sup> Doris Meissner, et al., “Immigration and America’s Future: A New Chapter,” *Report of the Independent Task Force on Immigration and America’s Future*, Migration Policy Institute, September 2006, 61.

<sup>36</sup> 9/11 and Terrorist Travel, 97. In a 2003 Center for Immigration Studies Backgrounder entitled “Shortcuts to Immigration: The ‘Temporary’ Visa Program is Broken,” Jessica Vaughan reports, “By all accounts – GAO reports, State Department OIG [Office of Inspector General], Congressional hearings, anecdotes, and the hard evidence of the presence of 3.2 million NIV [non-immigrant visa] overstayers --- fraud is rampant in the non-immigrant visa program. Problems include identity fraud, document fraud, counterfeiting, corrupt employees (both American and foreign), and widespread lying and misrepresentation on the part of the applicants.” Vaughan, 1.

preoccupied with illegal immigrants who gain unauthorized access and intending immigrants who exploit legal entry systems. This preoccupation has grave implications for homeland security. Seldom have the focus, priority, and resources been directed to terrorist exploitation of legal modes of travel and entry. Yet, terrorists successfully mirrored a pre-9/11 belief and practice of intending immigrants: “it is easier and safer for an intending immigrant to pay a \$45 visa interview fee and mislead a consular officer who has received training in cultural sensitivity and interview courtesy.”<sup>37</sup>

The Task Force bolsters the legal means argument and explains the policy ramifications associated with it: “Despite the fact that all of the 9/11 hijackers came through legal ports of entry and used visas obtained at overseas consulates, legal channels of entry are often overlooked in the public debate and in Congressional appropriations.”<sup>38</sup> By overlooking this fact-based assumption, policymakers dedicate the overwhelming majority of their time and efforts to countering illegal modes of travel and entry. The fact that decision makers allocate attention, interest, priorities, and resources to illegal immigration and southwest border security is illustrative. To secure the U.S.-Mexico border and combat illegal immigration, resource appropriations for the Border Patrol increased by 508 percent (from \$281 million to \$1.6 billion) during the period marked by the passage of the 1986 Immigration Reform and Control Act through 2002. In contrast, spending for Consular Affairs which has the critical role of identifying and intercepting terrorists abroad only experienced an eight percent increase, from \$281 to \$303 million during the same period.<sup>39</sup>

From 2002 to 2005, the Border Patrol budget has remained constant at \$1.4 billion, dipping to \$1.2 billion in 2004. Just as a large proportion of funds are allocated to the Border Patrol, a majority of the Border Patrol agents are deployed to “[fortify] traditional border-crossing locales in the southwest (about 90% of all Border Patrol

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<sup>37</sup> Nikolai Wenzel, “America’s Other Border Patrol: The State Department’s Consular Corps and its Role in U.S. Immigration,” Center for Immigration Studies *Backgrounder*, August 2000, <http://www.cis.org/articles/2000/back800.html> (accessed 15 September 2006), 3.

<sup>38</sup> Meissner, et al., “Immigration and America’s Future: A New Chapter,” 61.

<sup>39</sup> *Ibid.*, 54 and 60.

agents).”<sup>40</sup> Border enforcement policy designed to stem unauthorized flows, “has been the only component of immigration funding that consistently wins bipartisan political support, irrespective of outcomes.”<sup>41</sup>

The topic of illegal immigration relates to the third fact-based assumption. The issue of approximately 12 million illegal immigrants is much broader in economic and political scope. This contentious issue will not be addressed in this thesis even though illegals/illegal immigration are often conflated with terrorists/national security concerns. Sean Garcia states, “The terrorist argument takes advantage of public fears of terrorist attacks to combat the unrelated problem of illegal immigration.”<sup>42</sup> Consequently, this conflation has provided the ammunition for the Border Patrol to consistently win the priority and funding war. The main focus of this thesis will be that of temporary visa holders (student, visitor, business) who enter the U.S. for a specific period of time and who may violate the terms of their visas by being out-of-status.<sup>43</sup>

## **E. METHODOLOGY AND SOURCES**

This thesis is crafted from the analysis and research of a myriad of disparate sources. The three 9/11 Commission sources—*The 9/11 Commission Report*, *9/11 and Terrorist Travel*, and the Public Discourse Project—serve as the primary sources of this thesis. *9/11 and Terrorist Travel*, is a targeted monograph tied to the overarching 9/11 Commission’s independent, bipartisan efforts—*The 9/11 Commission Report*. *9/11 and Terrorist Travel* is the culmination of 14 months of study, evaluation, and research that pertains to pre- and post-9/11 “immigration, nonimmigrant visas and border security.”<sup>44</sup> The Public Discourse Project was intended to carry the torch of information

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<sup>40</sup> Walter A. Ewing, “Border Insecurity: U.S. Border-Enforcement Policies and National Security,” Spring 2006, American Immigration Law Foundation Special Report, [http://www.aifl.org/ipc/border\\_insecurity\\_spring06.pdf](http://www.aifl.org/ipc/border_insecurity_spring06.pdf) (accessed 28 July 2006), 4.

<sup>41</sup> Meissner, et al., “Immigration and America’s Future: A New Chapter,” 54 and 60.

<sup>42</sup> Sean Garcia, “Immigration Reform: The Key to Border Security,” *Americas Program, Interhemispheric Resource Center Policy Brief*, August 2003, <http://www.lawg.org/docs/0308immig.pdf> (accessed 10 April 2006), 1.

<sup>43</sup> U.S. Department of State Bureau of Consular Affairs, “Student Visas,” 4. In accordance with U.S. immigration laws, temporary visitors are required to depart the U.S. on or before the last day they are authorized to be in the U.S. based on the specified end date on the Arrival—Departure Record, Form I-94. Failure to depart will cause one to be out-of-status which is a violation of U.S. immigration laws.

<sup>44</sup> *9/11 and Terrorist Travel*, ix.

dissemination and status follow-up for the 9/11 Commission. Picking up where the Commission and its subsequent Public Discourse Project left off proved troubling and pointed to a gap in the literature.

With the disbanding of the 9/11 Commission on 21 August 2004 and the end of the Public Discourse Project operations on 31 December 2005,<sup>45</sup> what organizations provide oversight and follow-up in regards to the implementation and effectiveness of the 9/11 Commission's comprehensive recommendations? The Center for Immigration Studies, National Immigration Forum, Brookings Institution, Immigration Policy Center, Migration Policy Institute, current United Nations and U.S. counterterrorism strategies, Congressional hearings and legislation, CRS and GAO reports, policy briefs, law journals, scholarly journals, and expert sources offer implementation information, status updates, and effectiveness assessments. These secondary sources will be tapped in order to argue the central claim of this thesis.

Many of the sources confirm that the aim/objective of the three recommendations is to disrupt terrorist travel/mobility. This aim/objective aligns with both multi- and unilateral counterterrorism strategies. In order to achieve this aim/objective and support these strategies, the three security solutions have been implemented to enhance security at legal entrances and to target terrorist travel/mobility away (abroad and in-transit) and home (at the border and in-country). Assessing the post-9/11 implementation of the three recommendations is essential for homeland security prioritization and resource allocation decisions. Analysis of their effectiveness as counterterror measures should impact the decisions of policymakers, immigration, visa, customs, and border security officials. Assessments that analyze their ability to prevent terrorist entry are valuable and needed. Such assessments will help decision makers determine if the key recommendations should be given the appropriate priority and receive commensurate funding. By analyzing and drawing together various assessments, this thesis will help fill the acknowledged gap in the literature: "Currently, no single agency or bureau develops immigration policy, coordinates the work, and assesses the effectiveness of various federal agencies in performing their immigration functions."<sup>46</sup>

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<sup>45</sup> 9/11 Public Discourse Project, "Final Report on 9/11 Commission Recommendations," 5 December 2005, <http://www.9-11pdp.org> (accessed 10 April 2006), 3.

<sup>46</sup> Davy, Meyers, Batalova, 1.



Policy options analysis is the most appropriate method to examine the three key recommendations offered by *9/11 and Terrorist Travel* in order to describe their implementation and assess their effectiveness. The criterion to measure their effectiveness is the denial of terrorist entrance into the U.S and the absence of terrorist attacks on the U.S. homeland. Denying terrorist entrance is dependent upon identifying gaps/weaknesses and tailoring recommendations to address the gaps/weaknesses. As a first attempt to explore the implementation and assessment of three key post-9/11 recommendations with Schneier's five-step model, this thesis would be relevant to and utilized by policy and decision makers and immigration, visa, and customs authorities who must prioritize countermeasures and allocate resources accordingly.

## **F. GAPS, WEAKNESSES, AND RECOMMENDATIONS**

This section will present the three major pre-9/11 gaps and weaknesses outlined in and the post-9/11 recommendations prescribed by *9/11 and Terrorist Travel*. This section is comprised of two subsections. The first subsection will cover the three major pre-9/11 gaps/weaknesses: 1) marginal immigration, visa, and customs personnel training, 2) ineffective foreign student visa compliance tracking, and 3) nonexistent national entry-exit system. The second subsection will outline the three post-9/11 recommendations: 1) provide standardized operational training and additional guidance to immigration, visa, and customs personnel, 2) establish a foreign student visa compliance and tracking system, the Student and Exchange Visitor Information System, (SEVIS), and 3) develop and implement the National Security Exit and Entry Registration System (NSEERS).<sup>47</sup> The pre-9/11 gaps/weaknesses represent U.S. vulnerabilities that presented opportunities for the 9/11 terrorists to exploit. The post-9/11 recommendations offer the U.S. opportunities to enhance homeland security by exploiting terrorist travel and mobility vulnerabilities.

### **1. Pre-9/11 Gaps and Weaknesses**

The current literature points to gaps/weaknesses in pre-9/11 immigration, visa, customs, and border security systems. These gaps/weaknesses enabled terrorists (in 1993, for the Millennium Plot, and in 2001) to gain entry into and pose a threat to the U.S. homeland. The unfortunate lessons of the 1993 World Trade Center, Millennium

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<sup>47</sup> *9/11 and Terrorist Travel*, 149, 164, 155.

Plot, and 9/11 are the same. One important lesson learned is that terrorists exhibited travel patterns. Yet, “No government agency would analyze terrorists’ travel patterns until after 9/11, thus missing critical opportunities to disrupt their plans.”<sup>48</sup>

*9/11 and Terrorist Travel* argues U.S. immigration, visa, customs, and border security systems were founded on economics (globalization, travel, trade, foreign policy, diplomacy, and customer service) rather than national security or counterterrorism as is the case post-9/11. For economic reasons, U.S. immigration, visa, customs, and border security systems were designed to keep illegals out by excluding intending immigrants especially those from poorer countries.<sup>49</sup> They were not designed to exclude terrorists.<sup>50</sup> The goal of pre-9/11 U.S. immigration, visa, customs, and border security was to prevent the entry of illegal aliens, intending immigrants, known criminals, and drug couriers.<sup>51</sup> 9/11 would change things.

U.S. immigration, visa, and customs personnel also operated within a “culture of diplomacy” and “a dangerous culture of permissiveness in airport inspections” and followed a ‘customer-service approach’<sup>52</sup> as opposed to operating within a culture of national security and following a counterterrorism approach. For example, Michael Garcia and Ruth Wasem contend, “The 9/11 Commission concluded that the key officials responsible for determining alien admissions (consular officers abroad and immigration inspectors in the United States) were not considered full partners in counterterrorism efforts prior to September 11, 2001.”<sup>53</sup> These key officials operated in “an environment of travel facilitation” that afforded them only 45 seconds to process each customer.”<sup>54</sup> According to *9/11 and Terrorist Travel*, pressures to facilitate travel came from various government and commercial sectors such as embassies, members of Congress, the travel industry, and

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<sup>48</sup> *9/11 and Terrorist Travel*, x.

<sup>49</sup> Ibid., 43.

<sup>50</sup> Ibid., 12.

<sup>51</sup> Ibid., 5.

<sup>52</sup> Mark Krikorian, “Keeping Terror Out: Immigration Policy and Asymmetric Warfare,” *The National Interest* 75 (Spring 2004), 5-6.

<sup>53</sup> Michael John Garcia and Ruth Ellen Wasem, “Immigration: Terrorist Grounds for Exclusion of Aliens,” *CRS Report for Congress*, 5 September 2006, <http://www.fas.org/sgp/crs/homesecc/RL32564.pdf> (accessed 15 September 2006), 2.

<sup>54</sup> *9/11 and Terrorist Travel*, 135.

commercial airlines.<sup>55</sup> The quest for efficient and quick passenger processing was prompted by Section 286 of the 1990 Immigration and Nationality Act “that limited the total amount of time for a visitor to disembark from a plane and be processed through immigration inspection to 45 minutes, regardless of the number of passengers on the flight.”<sup>56</sup>

Personnel experienced cultural and environmental pressures of diplomacy, permissiveness, and travel facilitation. These pressures were compounded by inadequate training. *9/11 and Terrorist Travel* identified five major areas of training that were inadequate pre-9/11: inspector, counterterrorism, primary and secondary inspection, document fraud, and database training. A consensus prevailed among inspectors that training remained largely unchanged from the period of the 1970s through 2000.<sup>57</sup> Furthermore, the expectation persisted that “real” learning of inspection, document fraud, and database duties would take place at their assignments, and informal on-the-job training was stressed. On-the-job training efforts would be overwhelmed by customer and paperwork workloads and would not account for or reflect real-time intelligence and law enforcement information. Most training available or provided was outdated, infrequent, non-standardized, and lacked operational focus. Training that has an operational focus reflects an awareness, analysis, and inclusion of historical, present, and forecasted terrorist travel trends, techniques, tactics, and patterns.<sup>58</sup> The five areas lacked a solid counterterrorism focus.

Without a defined counterterrorism role and lacking the associated training, immigration, visa, and customs officials missed indicators of Islamic Fundamentalism

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<sup>55</sup> *9/11 and Terrorist Travel*, bid, 135.

<sup>56</sup> *9/11 and Terrorist Travel*, 135. In “The Open Door,” a Center for Immigration Studies Center paper, Steven A. Camarota argues, “The American People, Not Visa Applicants are the Customers. One of the most fundamental problems with the Consular Service is that it has adopted a culture of service rather than skepticism, in which visa officers are expected to consider applicants their customers rather than the American people. Thus, satisfying the customer – the foreign visa applicant – has been one of the most important goals, leading to pressure to speed processing and approve marginal applications....But it is difficult to imagine two less compatible functions than diplomacy and immigration enforcement. The diplomat’s goal of promoting cooperation and compromise is sometimes in conflict with the gatekeeper’s goal of exposing fraud and ensuring compliance with the law.” Camarota, “The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001,” 41-42.

<sup>57</sup> *Ibid.*, 136.

<sup>58</sup> *Ibid.*, x, 4, 136, 137, 164.

and dismissed fraudulent documents.<sup>59</sup> These officials are not completely to blame for these oversights. Because of intelligence oversight and sharing challenges, training lacked an operational focus. Training with an operational focus would have included lessons on indicators and fraud. Intelligence and law enforcement communities share in the culpability of intelligence oversight. Pre-9/11, some elements of terrorist travel, trends, techniques, and pattern intelligence were collected. Yet, the intelligence was neither fully developed nor shared with immigration, visa, customs, and border security personnel.

Raw data was collected but not completely analyzed nor shared in useable forms. The 9/11 Commission informs that during the 1990s, law enforcement investigations revealed a great deal of information on the travel tactics of terrorists.<sup>60</sup> However, this available information would quickly become outdated such as the two CIA produced training aids: “The Threat is Real” video (early 1980s) and the “Redbook” (1992) manual.<sup>61</sup>

the existence of a CIA training video and a manual is evidence of an understanding that terrorists relied on certain tactics when they traveled and that they could be stopped by alert individuals who recognized the use of those tactics....As the Redbook makes clear, by early 1993, when the first attack on the World Trade Center took place, the intelligence community already had decades of experience with the modes of travel of terrorist groups.<sup>62</sup>

Due to the general lack of a counterterrorism emphasis, pre-9/11 immigration, visa, customs, and border security personnel exercised a minimalist role. Counterterrorism efforts were relegated to the simple cross-referencing of watchlists. It

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<sup>59</sup> *9/11 and Terrorist Travel*, 135. In “The Open Door,” a Center for Immigration Studies Center paper, Steven A. Camarota argues, “The American People, Not Visa Applicants are the Customers. One of the most fundamental problems with the Consular Service is that it has adopted a culture of service rather than skepticism, in which visa officers are expected to consider applicants their customers rather than the American people. Thus, satisfying the customer – the foreign visa applicant – has been one of the most important goals, leading to pressure to speed processing and approve marginal applications....But it is difficult to imagine two less compatible functions than diplomacy and immigration enforcement. The diplomat’s goal of promoting cooperation and compromise is sometimes in conflict with the gatekeeper’s goal of exposing fraud and ensuring compliance with the law.” Camarota, “The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001,” 4-5.

<sup>60</sup> *9/11 and Terrorist Travel*, 48.

<sup>61</sup> *Ibid.*, 47-48.

<sup>62</sup> *Ibid.*, 47-48.

seems logical that untrained officials would not be able to gain on-the-job experience if they never had the opportunity to flex their counterterrorism muscles.<sup>63</sup> In the case of the State Department, consular officials charged with reviewing visa applications were not trained to identify indicators of terrorist affiliation and Islamic extremism.<sup>64</sup> Therefore, their visa decisions upheld the pre-9/11 objective of excluding intending immigrants. They based their decisions to issue or deny visas solely on checking a database of names to single out criminals and terrorists.<sup>65</sup>

Once terrorists transit to the U.S., the front-line immigration, customs, and border security inspectors must stop them from entering. Their training is absolutely crucial to denying terrorist entry. At the border, inspectors at U.S. ports-of-entry would also encounter the same training shortcomings and database challenges. Inspectors at U.S. ports-of-entry did not have the appropriate counterterrorism training: “[Any] ignorance was largely a function of a technological approach to terrorist screening that relied almost exclusively on a mechanical, computerized name check at the primary immigration inspection.”<sup>66</sup>

The quantity of watchlists presents challenges to semi-trained and overwhelmed personnel. Twelve separate watchlists are administered by nine different government agencies.<sup>67</sup> Like all other databases, watchlists are only as good as the information used to populate them. Therefore, the information provided would be dependent on the level, quality, and currency of intelligence, law enforcement, immigration, visa, and customs information sharing. In regards to the nineteen 9/11 terrorists, U.S. intelligence discovered that at least three of the hijackers had connections with terrorist groups, yet their names were not placed on border inspectors’ watchlists.<sup>68</sup> By relying on watchlists,

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<sup>63</sup> Ibid., 4-5. In April 1999, when the 19 hijackers began their attempts to obtain U.S. visas, “Consular officers were unaware of the potential significance of an indicator of potential extremism present in some al Qaeda passports, had no information about fraudulent travel stamps that are associated with al Qaeda, and were not trained in terrorist travel tactics generally....Consular officers were not trained to detect terrorists in a visa interview. Terrorism concerns were handled through the watchlist, and all conspirators’ names were checked against the terrorist watchlist without producing a match.”

<sup>64</sup> *9/11 and Terrorist Travel*, 3 and 12.

<sup>65</sup> Ibid., 3 and 12.

<sup>66</sup> Ibid., 94.

<sup>67</sup> Krikorian, “Keeping Terror Out: Immigration Policy and Asymmetric Warfare,” 6.

<sup>68</sup> Betsy Cooper, “Security Checks Affect Legal Immigration,” 1 October 2004, <http://www.migrationinformation.org/USFocus/display.cfm?ID=258> (accessed 8 August 2006), 1.

officials would miss opportunities to identify terrorists during other procedures (i.e., document inspections and applicant interviews).

Databases should supplement the training provided to and skills possessed by immigration, visa, and customs officials. Pre-9/11 database training was lacking even though quantities of database were not: “although there was training in the existence of the 20-plus databases available in primary and secondary immigration and customs inspection, immigration inspectors were not taught the content and value of these databases.”<sup>69</sup> No database training was conducted at the formal training course. Therefore, when inspectors crossed paths with the 9/11 hijackers, the inspectors were unaware terrorists were included in these databases. Hence, they did know they should be searching for them. The search for criminals, illegals, and intending immigrants eclipsed counterterror measures.

The benefits of technology, databases, and automation cannot be denied. Technology can enable personnel to perform their jobs more quickly, but it should not be completely relied upon. There is no substitute for an experienced and trained official who can adeptly pick up on intangible factors such as behavioral and cultural cues.<sup>70</sup> Inadequate training and travel facilitation exasperated an irony of visa system. Such irony would prove dangerous in light of the lessons of 9/11:

Visa officers have long been criticized for being too cautious, denying visas to too many people with legitimate reasons to travel in the United States. Still many applicants who intend to violate the terms of their visa have applications approved.<sup>71</sup>

The 9/11 terrorists intended to violate the terms of their approved visas. They submitted false statements and fraudulent documents to obtain visas at overseas consulates, pass U.S. immigration and customs inspections, and gain entry.<sup>72</sup> They adjusted their status without notifying the proper authorities and/or overstayed the time

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<sup>69</sup> *9/11 and Terrorist Travel*, 137.

<sup>70</sup> *9/11 and Terrorist Travel*, 94 and 137.

<sup>71</sup> Martin and Martin, 336.

<sup>72</sup> Vaughan, 1. “The Immigration and Naturalization Service (INS) estimates that roughly 3.2 million of the estimated...illegal immigrant population, or 40 percent, originally entered the country on non-immigrant visas. That is a troubling high number of visa mistakes made each year, with profound security, fiscal, and social consequences. The most obvious of these was the attack on September 11, 2001, which was carried out by terrorists who entered the country on NIVs issued by U.S. consular officers.”

limits imposed by their temporary/nonimmigrant visas. For the few nefarious visitors granted visas and entry, follow-up did not transpire between the educational institutions and immigration, visa, and customs authorities. Some were on tourist visas but instead enrolled in flight training school, and others were on student visas and never showed up for school.<sup>73</sup>

These gap/weaknesses validated the recommendations for the foreign student visa compliance and entry-exit tracking systems.<sup>74</sup> A foreign student visa compliance tracking system serves as a “truancy” tool to track foreign students at the border and post-entry. As the name implies, an entry-exit tracking system logs the entry and exits of U.S. visitors. Pre-9/11, no national tracking system existed to match a visitor’s entry to their exit.<sup>75</sup> Therefore, the U.S. lacked a straightforward and vital capability to determine if any visitor had overstayed a previous visit.<sup>76</sup>

The events of 9/11 provide a case in point: not a single one of the known hijackers, nor any of the other suspects subsequently identified, qualified as an “immigrant,” in the sense of someone who was legally admitted to the United States for permanent resettlement or had lived there illegally for an extended period. As it happens, they had all entered the country legally as duly authorized visitors, although some subsequently overstayed the allowed period and hence became “illegal aliens” by the time they committed their crimes.<sup>77</sup>

Even though the terrorists would overstay and violate the terms of their visas, they did obtain passports and visas to facilitate their exploitation of the legal immigration, temporary/nonimmigrant visa, and customs inspection systems. In order to obtain passports, visas, and access, they would make false statements and submit fraudulent documents. Together with a stronger training regimen, student visa compliance tracking and entry-exit systems would have enhanced the U.S. ability to enforce its immigration, visa, and customs laws and would have flagged visitors who overstayed their visas.

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<sup>73</sup> *9/11 and Terrorist Travel*, 3-7.

<sup>74</sup> *The 9/11 Commission Report*, 6.

<sup>75</sup> *9/11 and Terrorist Travel*, 100.

<sup>76</sup> *Ibid.*, 100.

<sup>77</sup> Aristide R. Zolberg, “Guarding the Gates,” in *Understanding September 11*, ed. Craig Calhoun, Paul Price, and Ashley Timmer (New York: The New Press, 2002), 289.

These tracking systems would have to compensate for the flawed and vulnerable immigration, visa, customs, and borders security systems.

## **2. Post-9/11 Recommendations to Address Gaps/Weaknesses**

*9/11 and Terrorist Travel* prescribes recommendations to address gaps/weaknesses. Three key post-9/11 recommendations are 1) provide standardized operational training and additional guidance to immigration, visa, and customs personnel, 2) establish a foreign student visa compliance and tracking system, the Student and Exchange Visitor Information System, (SEVIS), and 3) develop and implement the National Security Exit and Entry Registration System (NSEERS).<sup>78</sup> By implementing these key security solutions, the U.S. has an opportunity to enhance homeland security by exploiting terrorist travel and mobility vulnerabilities.

Post-9/11, the U.S. has attempted to fill gaps in flawed immigration, visa, customs, and border security systems to stop terrorists from entering the country. The U.S. has attempted to patch holes in these systems, as they were exploited by the 19 9/11 terrorists. The patchwork of countermeasures has experienced varying degrees of success and effectiveness. The post-9/11 “patchwork” response has been best characterized by Mark Krikorian:

Unfortunately, our immigration response to the wake-up call delivered by the 9/11 attacks has been piecemeal and poorly coordinated. Specific initiatives that should have been set in motion years ago have finally begun to be enacted, but there is an ad hoc feel to our response, a sense that bureaucrats in the Justice and Homeland Security departments are searching for ways to tighten up immigration controls that will not alienate one or another of a bevy of special interest groups.<sup>79</sup>

Identifying and intercepting terrorists as far away as possible from the intended target—the U.S.—is the optimal objective for the U.S. This objective calls for the U.S. to “push out our borders.”<sup>80</sup> More time, money, and lives are saved when this objective can be achieved.<sup>81</sup> To successfully accomplish this objective, the Department of State

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<sup>78</sup> *9/11 and Terrorist Travel*, 149, 164, 155.

<sup>79</sup> Krikorian, “Keeping Terror Out: Immigration Policy and Asymmetric Warfare,” 4.

<sup>80</sup> U.S. Senate Committee on Governmental Affairs, “Summary of Intelligence Reform and Terrorism Prevention Act of 2004,” 21.

<sup>81</sup> Lake, Robinson, and Seghetti, 3-4.



Consular Affairs must take on and fulfill its role as “America’s Other Border Patrol.”<sup>82</sup> This objective requires enhanced domestic and international law enforcement, intelligence, immigration, visa, and customs information sharing, coordination, and cooperation. Chapter II of this thesis will elaborate on this optimal objective by offering a “home” and “away” game approach. The “home” and “away” game approach explains how the three key recommendations align and support multi- and unilateral counterterrorism strategies that are designed to disrupt terrorist travel/mobility abroad, at the border, and in-country. The multi- and unilateral strategies provide resolutions and provisions to enhance international and domestic information sharing, coordination, and cooperation.

For terrorists desiring to travel and enter the United States, their journey begins abroad. Each interaction with immigration, visa, and customs officials presents an opportunity to exploit terrorist travel/mobility.<sup>83</sup> The first interaction with U.S. officials is at their country’s respective Department of State overseas-based Consular Affairs. Foreign nationals initiate the travel process by applying for temporary/nonimmigrant visas. Counterterrorism-trained consular officials could identify potential terrorists amongst the pool of prospective applicants through the use of inspector interviews, current watchlists, and visa overstay/term violation databases. For example, during the foreign student visa adjudication process, Consular Affairs officials access the SEVIS database to verify prospective applicants’ acceptance to and intended attendance at an educational institution.<sup>84</sup> To ensure the accuracy and currency of operational training, watchlists, and databases, coordination and information sharing with international and domestic intelligence and law enforcement communities are essential. Cooperative visa issuance and admission arrangements must also be forged with overseas diplomatic corps officials to successfully exploit terrorist travel and mobility. Intercepting terrorists and foiling their plans abroad makes the job of U.S. officials stationed at home “easier.”

Consular Affairs have employed practices and procedures to make their jobs easier. These practices and procedures can no longer be encouraged in the post-9/11

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<sup>82</sup> Wenzel, 1.

<sup>83</sup> *The 9/11 Commission Report*, 384.

<sup>84</sup> U.S. Department of State Bureau of Consular Affairs, “Student Visas,” 2.

security environment. Consular Affairs' practices of issuing visas "for the maximum period of validity" and "passing the buck" of identifying intending immigrants to INS border inspectors should not be accepted post-9/11 business practices.<sup>85</sup> These practices and procedures were founded on premises that are counter to the counterterror focus of post-9/11 recommendations. To lessen workloads and streamline processes, encouraging the issuance of maximum validity visas was based on the following premise: "As the theory goes, if an applicant is going to overstay, he only needs one opportunity."<sup>86</sup> This practice was codified in a 15 March 2001 telegram disseminated to all overseas Consular Affairs posts. The telegram voiced concerns over customer service and diplomacy: "Limiting visa validity...opens our posts to charges they are treating applicants from the host country unfairly, and creates additional workload while doing little, if anything to discourage determined intending immigrants from remaining in the United States."<sup>87</sup> "Passing the buck" of identifying intending immigrants and now terrorists is not acceptable. The telegram also communicated the illogical and dangerous thinking behind this practice. Such thinking no longer belongs in post-9/11 immigration, visa, and customs mindsets and circles: "INS inspectors at the ports of entry are 'better positioned' to identify intending immigrants, and we're encouraged to leave that job to the INS."<sup>88</sup>

If the terrorists are not identified and intercepted by Consular Affairs officials abroad, then the responsibility of stopping terrorists falls squarely on the shoulders of U.S.-based immigration and customs officials. Not only must these officials contend with the flood of 500 million people that cross U.S. borders at legal entry points and the 500,000 or more that enter illegally, but they must also identify and intercept the few nefarious terrorists amongst these entrants:<sup>89</sup> "If [the] first stage is overlooked [abroad], the screening at the border could lack focus and be overwhelmed by the sheer volume of dangerous travelers and materials."<sup>90</sup>

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<sup>85</sup> Vaughan, 4.

<sup>86</sup> Ibid., 4.

<sup>87</sup> Ibid., 4.

<sup>88</sup> Ibid., 4.

<sup>89</sup> *The 9/11 Commission Report*, 383. Of the 500 million entrants about 330 million are noncitizens.

<sup>90</sup> Jennifer E. Lake, William H. Robinson, and Lisa M. Seghetti, "Border and Transportation Security: The Complexity of the Challenge," *CRS Report for Congress*, 29 March 2005, <http://www.fas.org/sgp/crs/homesec/RL32839.pdf> (accessed 4 September 2006), 3-4.

Consular Affairs officials enjoy the advantages of time, distance, manageable customer flows, and single-task responsibilities. During the visa adjudication process, consular officers are not bound by the 45-second rule to admit visitors as U.S. customs and immigration officials are. The temporary/nonimmigrant visa adjudication process can take from one day up to several weeks depending on the size, workload, and customer service/timeliness approach of the Consular Affairs post, the quality of the individual application, and each applicant's circumstances<sup>91</sup> (i.e., administrative processing and special clearances).<sup>92</sup> Post-9/11, visa scrutiny levels have increased which has extended and slowed the adjudication process in some instances. During the adjudication process, applicants will experience two waiting periods: 1) Wait Time for a Nonimmigrant Visa Interview Appointment and 2) Wait Time for a Nonimmigrant Visa To Be Processed.<sup>93</sup> Due to travel facilitation, customer service, and diplomatic pressures, border immigration and customs officials are not encouraged to wait when processing visitors.

The primary duty of Consular Affairs officials assigned to 265 consular posts<sup>94</sup> is to issue visas to a markedly smaller legal population. The total number of temporary/nonimmigrant visas issued in 2005 is 5,388,937, down from 7,588,778 in 2001.<sup>95</sup> If the terrorists pass the visa adjudication test, their next objective is to gain

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<sup>91</sup> Vaughan, 6-9. In 2005, Consular Affairs officials received a total of 365,440 applications for F and M class temporary/ nonimmigrant visas, issued 261,968 visas, and refused 103,471 applications. U.S. Department of State Bureau of Consular Affairs, "Nonimmigrant Visa Workload Fiscal Year 2005," FY2005 NIV Workload by Category, *Report of the Visa Office*, Visa Statistics, <http://travel.state.gov/pdf/fy%202005%20niv%20workload%20by%20category.pdf> (accessed 10 November 2006), 1

<sup>92</sup> U.S. Department of State Bureau of Consular Affairs, "Temporary Visitors to the U.S: Visa Wait Times (NEW)," [http://travel.state.gov/visa/temp/wait/tempvisitors\\_wait.php](http://travel.state.gov/visa/temp/wait/tempvisitors_wait.php) (accessed 10 November 2006), 1.

<sup>93</sup> Ibid., 1. Applicants can access the U.S. Department of State Bureau of Consular Affairs website and use the "Wait Times for a Nonimmigrant Visa to be Processed" tool. They can select the city of their respective Consular Affairs Post with the pull-down menu. In doing so, they can ascertain typical wait times for 1) Nonimmigrant Visa Interview Appointments (in calendar days) and 2) Nonimmigrant Visa Processing (in workdays). Some visa applications require additional special clearances (dependent on course of study and nationality of the student) or administrative processing, which requires some additional time. Most special clearances are resolved within 30 days of application. Applicants are advised when they apply. When additional special clearances or administrative processing is required, the timing will vary based on individual circumstances of each case.

<sup>94</sup> U.S. Department of State Bureau of Consular Affairs, "Mission: Career Opportunities," <http://careers.state.gov/> (accessed 11 November 2006), 1.

<sup>95</sup> U.S. Department of State Bureau of Consular Affairs, "Table 1, Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts: Fiscal Years 2001-2005," 1.

entry at the U.S. border. At the 327 border ports-of-entry<sup>96</sup> and within the interior, immigration and customs inspectors and INS agents must perform a multitude of tasks that involve a significantly larger legal and illegal population totaling 500 million. A visa does not constitute a free pass to enter the U.S. A visa simply gives a foreign visitor permission to request entrance at a port-of-entry. Foreign nationals are in conditional status until they are granted or refused entry. Therefore, immigration and customs inspectors have crucial identification and interception responsibilities.<sup>97</sup>

If terrorists slip past the overseas immigration and visa systems, U.S. immigration and customs inspectors may identify and intercept them at the border. Terrorist interaction with trained border security officials constitutes yet another opportunity for identification and interception. A second and perhaps third round of interviews conducted by primary and secondary inspectors can uncover a truer sense of terrorist intentions (i.e., student, visitor, business). The officials can determine if the intentions, identity, duration of visit, and visa validity match the travel documents, financial support statements, and watchlist checks.<sup>98</sup>

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<sup>96</sup> U.S. Customs and Border Protection, "Ports of Entry," [http://www.cbp.gov/xp/cgov/import/communications\\_to\\_trade/ports.xml](http://www.cbp.gov/xp/cgov/import/communications_to_trade/ports.xml) (accessed 11 November 2006), 1. The U.S. Customs and Border Protection provides the definition and criteria for what constitutes a "port of entry." A "Port of Entry" is an officially designated location (seaports, airports, and or land border locations) where CBP officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of CBP and related laws. The following are considered the minimum basic criteria for establishing a port of entry. The applicant or requesting community must:

Prepare a report that shows how the benefits to be derived justify the Federal Government expense.

Be serviced by at least one other major mode of transportation.

Have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius).

The actual workload in the area must be one or a combination of the following:

15,000 international air passengers (airport).

2,000 scheduled international arrivals (airport).

2,500 consumption entries (each valued over \$2,000), with no more than half being attributed to any one party (airport, seaport, land border port).

<sup>97</sup> U.S. Department of State Bureau of Consular Affairs, "Student Visas," 4. A visa allows a foreign visitor coming from abroad to travel to a United States designated port-of-entry and request permission to enter the U.S. Applicants should be aware that a visa does not guarantee entry into the United States. The Department of Homeland Security U.S. Customs and Border Protection officials have authority to permit or deny admission to the United States. Once permitted entry, the CBP official will determine the length of visit (Duration of Status) on the Arrival-Departure Record, Form-I-94.

<sup>98</sup> *9/11 and Terrorist Travel*, 92-94.

Immigration personnel can also administer the foreign student visa compliance and entry-exit tracking systems. These tracking systems can help identify those travelers who intend to or have violated the terms of their temporary/nonimmigrant visas. Some visitors possessing temporary visas have travel patterns typified by frequent entries and exits: “Many nonimmigrants, such as students, diplomats, and temporary workers, enter and leave the United States more than once each year.”<sup>99</sup> Each entry-exit presents an opportunity for the U.S. to profit from investments in post-9/11 training of immigration, visa, and customs officials. These newly anointed counterterrorism officials have a significant role to play. Their training programs and guidance initiatives must now embrace their role as counterterror officials. Intelligence and law enforcement communities must acknowledge this new role. They must support these officials by sharing information and maintaining open communications.<sup>100</sup>

This support will reinforce immigration officials’ counterterrorism training along with their ability to leverage SEVIS and NSEERS capabilities to disrupt terrorist travel/mobility. Policy makers and immigration, visa, customs, and border security officials must decide if training, SEVIS, and NSEERS should be prioritized as counterterror measures and, therefore, receive the commensurate funding. Schneier’s five-step model provides an assessment tool to determine how effective the three key recommendations are in mitigating the terrorist threat to the homeland. The analysis and assessment that this thesis presents can assist them in their decision making.

The U.S. cannot revert back to pre-9/11 levels of homeland security ineffectiveness characterized by “a legacy of poor management and low morale, exemplified by [the INS] sending out visa notification letters to two of the September 11 hijackers [Mohammed Atta and Marwan al-Shehhi]<sup>101</sup> six months after the attacks.”<sup>102</sup> Assessments of the key recommendations will help to increase their effectiveness as

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<sup>99</sup> Grieco, 5.

<sup>100</sup> Ewing, 2.

<sup>101</sup> John Greenya, “Immigration in Post-9/11 America,” August 2003, [http://www.dcb.org/for\\_lawyers/washington\\_lawyer/august\\_2003/immigration.cfm](http://www.dcb.org/for_lawyers/washington_lawyer/august_2003/immigration.cfm) (accessed 2 May 2006), 1.

<sup>102</sup> Ivo H. Daalder, et al., *Assessing the Department of Homeland Security* (Washington, D.C.: Brookings Institution Press, 2002), <http://www.brook.edu/fp/projects/homeland/assessdhs.pdf> (12 April 2006), 13.

counterterror measures to stop terrorist entrance and to prevent terrorist attacks. Policymakers and officials can use the assessments to establish priorities and allocate resources for homeland security.

## **II. “HOME” AND “AWAY” GAME APPROACH**

This chapter offers a “home” and “away” game approach to disrupting terrorist travel/mobility. Chapter II is comprised of four sections: Aim/Objective, Key Players, Away Game: United Nations Report and Strategy, and Home Game: National Counterterrorism Strategies. Chapter II opens with the aim/objective of three security solutions. This aim/objective aligns with both multi- and unilateral counterterrorism strategies that validate and justify the three key recommendations. In order to achieve this aim/objective and support these strategies, the three security solutions have been implemented to enhance security at legal entrances.

The aim/objective section expounds upon the importance of disrupting terrorist travel/mobility and emphasizes identifying and intercepting terrorists abroad. Stopping terrorists abroad or in-transit to the U.S. eases operational pressures for U.S. border officials by containing the terrorist threat to an overseas locale and at a distance. Combined efforts of U.S. Department of State Consular Affairs officials and domestic and international intelligence and law enforcement authorities abroad are indispensable to denying terrorist transit to and entrance into the U.S. At the U.S. border, immigration and customs personnel must also have access to shared intelligence and law enforcement information to prevent terrorist entry.

Preventing terrorist exploitation of immigration and visa systems abroad can be defined as an “away game.” Domestic immigration and customs systems with the same aim/objective make up the closely connected “home game.” In regards to the three security solutions, each approach is characterized by its key players. Their effectiveness and success as counterterror officials are linked to their implementation of the three security solutions post-9/11. Law enforcement and intelligence communities are key players in both away and home approaches. Consular Affairs officials are key away game players. Border customs and immigration inspectors are key home game players. Consular Affairs, immigration, and customs personnel must have current, standardized, and operational training and guidance to effectively leverage technologies such as SEVIS and NSEERS. The current United Nations and U.S. counterterrorism strategies clearly illustrate the “away” and “home” game approach to disrupting terrorist travel and

mobility. Their inclusion in the discussion is necessary to demonstrate how the three security solutions align with current multi- and unilateral strategies. The multi- and unilateral strategies provide avenues to enhance international and domestic information sharing, coordination, and cooperation.

#### **A. AIM/OBJECTIVE OF THREE KEY SECURITY SOLUTIONS**

In the wake of 9/11, the United States implemented the three key immigration security solutions as prescribed in *9/11 and Terrorist Travel*: 1) provide standardized operational training and additional guidance to immigration, visa, and customs personnel, 2) establish a foreign student visa compliance and tracking system, the Student and Exchange Visitor Information System, (SEVIS), and 3) develop and implement the National Security Exit and Entry Registration System (NSEERS) with the aim of denying terrorist entry to prevent attacks upon its homeland. Remaining in-country, or embedding, is also an important operational requirement for terrorists. *9/11 and Terrorist Travel* asserts,

THE SUCCESS OF THE SEPTEMBER 11 PLOT depended on the ability of the hijackers to obtain visas and pass an immigration and customs inspection in order to enter the United States. It also depended on their ability to remain here undetected while they worked out the operational details of the attack. If they had failed on either count—entering and becoming embedded—the plot could not have been executed.<sup>103</sup>

Entering and embedding are facets of terrorist travel and mobility. Disrupting terrorist travel/mobility forms the backbone of the three security solutions.

Steven Camarota stresses that terrorist ability to attack is contingent upon U.S. ability to prevent their entry. He emphasizes the critical role of the U.S. immigration system in enhancing the nation's ability to identify and intercept terrorists emanating from abroad.<sup>104</sup> In the post-9/11 threat environment, the U.S. homeland is now considered “fair game” in terrorist travel/mobility strategy. Immigration, visa, and customs personnel, not the U.S. military, will be the first to encounter terrorists on the front lines of the overseas and border “perimeter.”<sup>105</sup> These border security systems must adjust their target scopes. Instead of targeting only illegal aliens, intending

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<sup>103</sup> *9/11 and Terrorist Travel*, 11.

<sup>104</sup> Camarota, 12-13.

<sup>105</sup> O'Hanlon, et al., *Protecting the American Homeland*, 14.



immigrants, known criminals, and drug couriers,<sup>106</sup> they must also hone in on terrorists. Key players must sharpen their skills in collecting, analyzing, and disseminating terrorist travel trends, techniques, tactics, and patterns.<sup>107</sup>

Reinforcing this line of reasoning, the Migration Policy Institute published “Immigration and America’s Future: A New Chapter” in September 2006. It is an exhaustive 14-month study (same duration as *9/11 and Terrorist Travel* research efforts) of immigration over time. The report is the work of the Independent Task Force on Immigration. The Task Force identifies “Security” as one of six challenges of the immigration system. To bolster the security of the nation, the Task Force offers various recommendations. Specifically, they align two goals which relate directly to this thesis. The first goal calls for the strengthening of immigration systems at legal ports-of-entry:

As southwest border enforcement increases, incentives for individuals to use legal ports-of-entry to gain admittance to the United States will continue to grow. Legal immigration admission procedures must not become ‘weak links’ in border protection.<sup>108</sup>

Given the legal modes of entry of the 9/11 terrorists, heightened emphasis of and increased funding for securing legal entry points is warranted. Implementation of the three security solutions is geared to enhance security at legal entrances. As *9/11 and Terrorist Travel* recommends, the three security solutions would also frustrate terrorist travel. To accomplish this aim, the second goal advocates higher priority and resources for tracking and disrupting terrorist travel.<sup>109</sup> The Task Force elaborates on these two goals with Recommendation #8 of the 16 that are offered:

Terrorist tracking requires a distinct mindset and resource allocations, and it is dependent on vastly strengthened intelligence collection and analysis, information-sharing between agencies; upgraded travel documents and systems; vigorous law enforcement; and cooperation with foreign law enforcement and intelligence officials.<sup>110</sup>

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<sup>106</sup> *9/11 and Terrorist Travel*, 5.

<sup>107</sup> Camarota, 13.

<sup>108</sup> Doris Meissner, et al., “Immigration and America’s Future: A New Chapter,” xix.

<sup>109</sup> *Ibid.*, 62-63.

<sup>110</sup> *Ibid.*, 63.

## **B. KEY PLAYERS**

Constraining terrorist mobility/travel by identifying the few terrorists from the many legitimate visitors is essential to preventing terrorist attacks. To be successful, identification efforts must take place abroad and/or in-transit and at U.S. borders and/or within the country. Teams of immigration, visa, customs, and border security systems are integral in an “away game” (exploit terrorist travel/mobility abroad or in-transit) and a “home game” (exploit terrorist travel/mobility by preventing terrorist entrance at the border and identify/intercept them post-entry) to preventing terrorist attacks against the U.S. Key players figure prominently in both away and home games. Specific players are instrumental to the implementation of the three security solutions.

Key players of the away game include: the Department of State’s Consular Affairs officials and foreign and overseas-based domestic intelligence and law enforcement authorities. To be effective, Consular Affairs officials must receive operational training. Such training is developed from terrorist travel trends, techniques, tactics, and patterns that are collected and shared by intelligence and law enforcement authorities. Nikolai Wenzel has termed the Department of State’s Consular Affairs “America’s other Border Patrol.”<sup>111</sup> The visa filter function of Consular Affairs is important because the closer a terrorist gets to the U.S., it becomes more difficult to exclude him. Consular officials can access the NSEERS database to check if applicants have violated the terms of their previous or current U.S. visas, or are “overstayers.” During the foreign student and exchange visitor visa adjudication processes, Consular Affairs officials will also access SEVIS to verify student enrollment in and acceptance to an educational institution. These results of database queries will enhance the viability of their visa decisions. By disapproving potential terrorists’ visa applications, consular officials not only deny visas, but they also deny terrorists entry into the U.S.

Once a terrorist is granted entry, the difficulty of identifying, finding, and removing him increases exponentially.<sup>112</sup> Therefore, the home game features additional key players who have a role in stopping terrorist entry. The first and most important phase of the home game encompasses the border. The border consists of 327 air, sea, and

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<sup>111</sup> Wenzel, 1.

<sup>112</sup> Krikorian, “Keeping Terror Out: Immigration Policy and Asymmetric Warfare,” 4.

land ports-of-entry<sup>113</sup> and the 7514-miles,<sup>114</sup> or the stretches, between these ports-of-entry.<sup>115</sup> Key players at the ports-of-entry are trained CBP and USCIS inspectors. For the purposes of this thesis, the second phase of the home game incorporates ICE personnel who administer and manage SEVIS and NSEERS. The intelligence and law enforcement communities and their contributions are especially critical to success of the home game. The stretches between ports-of-entry are staffed by the Border Patrol, Coast Guard, and the National Guard. The stretches are typically the transit points for illegal immigration. Since the focus of the thesis is the examination of terrorist entry through legal means, the stretches and its key players will not figure prominently in this thesis.

The three security solutions are designed to help win both the away and home games. The optimal objective is to prevent them from traveling to and entering the U.S. by beating them at the away game. In doing so, the home game will not have to be played. This away/home game continuum has been conceptualized and illustrated in the literature as the layered defense for domestic security,<sup>116</sup> concentric circles,<sup>117</sup> a multi-tiered strategy,<sup>118</sup> a system of systems,<sup>119</sup> three layers of redundant immigration-control,<sup>120</sup> geographic zones,<sup>121</sup> and/or screens.<sup>122</sup> Yet, even the best-intentioned immigration, customs, and visa systems cannot stop terrorists from boarding international

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<sup>113</sup> U.S. Customs and Border Protection, “Ports of Entry,” 1.

<sup>114</sup> Stephen R. Vina, “Enforcing Immigration Law: Issues and Complexity,” *CRS Memorandum*, 28 July 2005, <https://www.hsdl.org/homesec/docs/crs/nps20-110805-04.pdf> (accessed 12 April 2006), 5.

<sup>115</sup> Krikorian, “Keeping Terror Out: Immigration Policy and Asymmetric Warfare,” 5.

<sup>116</sup> Nancy R. Kingsbury, “Homeland Security: Overstay Tracking is a Key Component of a Layered Defense,” *General Accounting Office Report*, Testimony Before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives, 16 October 2003, <http://www.gao.gov/news.items/d041070t.pdf> (accessed 15 November 2006), 5.

<sup>117</sup> William J. Krouse and Raphael F. Perl, “Terrorism: Automated Lookout Systems and Border Security Options and Issues,” *CRS Report for Congress*, 18 June 2001, <http://www.fas.org/irp/crs/RL31019.pdf> (accessed 4 September 2006), 2.

<sup>118</sup> Michael O’Hanlon, “BORDER PROTECTION: Testimony of Michael O’Hanlon, coauthor of *Protecting the Homeland 2006/2007*, June 28,” <http://www.brookings.edu/views/testimony/ohanlon/20060628.htm> (accessed 4 September 2006), 3.

<sup>119</sup> James Carafano, “Safeguarding America’s Sovereignty: A “System of Systems” Approach to Border Security,” *Executive Summary Backgrounder*, no. 1898, Washington, D.C.: Heritage Foundation, 28 November 2005, 4.

<sup>120</sup> Krikorian, “Keeping Terror Out: Immigration Policy and Asymmetric Warfare,” 4.

<sup>121</sup> Lake, Robinson, and Seghetti, 8.

<sup>122</sup> *Ibid.*, 3.

flights bound for the U.S. with liquid explosives. In this case, winning the away game will depend on the performance of the immigration and visa customs overseas-away team and international cooperation, law enforcement, and intelligence efforts.<sup>123</sup> Information learned about the 9/11 terrorists provides the rationale:

Al Qaeda's hijackers were carefully chosen to avoid detection: all but two were educated young men from middle-class families with no criminal records and no known connections to terrorism. To apprehend such individuals before they attack requires a laser-like focus on the gathering, sharing, and analysis of intelligence, working hand-in-glove with well-targeted criminal and immigration law enforcement.<sup>124</sup>

Two strategies have been released recently that tie directly to the concepts of the "away" and "home" games. The first strategy refers to the away game. On 2 May 2006, the Secretary-General submitted a report to the General Assembly for review entitled "Uniting Against Terrorism: Recommendations for a Global Counter-Terrorism Strategy." On 8 September 2006, the United Nations Global Counter-Terrorism Strategy was adopted by the Member States. The second strategy relates to the home game. The National Strategy for Combating Terrorism was released on 6 September 2006.

### **C. AWAY GAME: UNITED NATIONS REPORT AND STRATEGY**

The Secretary-General's report consists of five major pillars/recommendations:

- 1) Dissuading people from resorting to terrorism or supporting it;
- 2) Denying terrorists the means to carry out an attack;
- 3) Deterring States from supporting terrorism;
- 4) Developing State capacity to defeat terrorism; and
- 5) Defending human rights.

Each recommendation is comprised of operational elements. The second pillar/recommendation is "Denying terrorists the means to carry out an attack." This recommendation has five operational elements. The fourth operational element is

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<sup>123</sup> *The 9/11 Commission Report*, 385.

<sup>124</sup> Chishti A. Muzaffer, et al., "America's Challenge: Domestic Security, Civil Liberties, and National Security Unity After September 11," Migration Policy Institute, 2003, [http://migrationpolicy.org/pubs/Americas\\_Challenges.pdf](http://migrationpolicy.org/pubs/Americas_Challenges.pdf) (accessed 5 September 2006), 7.

“Denying terrorist access to travel.” The report expands upon this operational element, which has four specific proposals.<sup>125</sup>

The United Nations Global Counter-Terrorism Strategy presents the U.N. resolution and the Plan of Action. The Plan of Action is comprised of four measures: I. Measures to address the conditions conducive to the spread of terrorism, II. Measures to prevent and combat terrorism, III. Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard, and IV. Measures to ensure respect for human rights for all and the rule of law is the fundamental basis of the fight against terrorism.

The Action Plan's second measure (II. Measures to prevent and combat terrorism) has eighteen elements. This measure and its elements are designed to “prevent and combat terrorism, in particular by denying terrorists access to the means to carry out

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<sup>125</sup> Report of the Secretary-General, “Uniting Against Terrorism: Recommendations for a Global Counter-terrorism Strategy,” 2 May 2006, <http://www.un.org/unitingagainstterrorism/contents.htm> (accessed 4 October 2006), 12-13.

“62. Much of international terrorist activity still relies on physical movement - using regular transportation to reach another country in order to promote their message, recruit new members, and provide explosives training or transfer money. We need to do more to address loopholes in transport security, and to assist States in developing tools to tackle identity theft and fraudulent travel documents. In accordance with Security Council resolution 1373 (2001), the Counter-Terrorism Committee is working with States on their adoption of legislation and administrative measures to deny terrorists access to travel, and this work should be continued.

63. The international community must tackle the criminal trade in illegal documents that acts as an enabler to the terrorists' goals. The assistance project recently launched by the International Civil Aviation Organization (ICAO) aimed at bringing the passports of approximately 70 States up to the security baseline was a step in the right direction. The database of the International Criminal Police Organization (Interpol) on stolen and lost travel documents is also an effective tool in this regard, particularly as it concerns intercepting terrorists when attempting to cross borders. I urge Interpol to enhance its work on the database and likewise urge Member States to make full use of this tool, in particular by sharing relevant information with each other through the database and granting access to its law enforcement officials in the field, including at border crossings.

64. Equally, we must strengthen the effectiveness of the travel ban under the sanctions regime against Al-Qaida and the Taliban, as it appears not to have been as effective as had been hoped. The Interpol-United Nations Special Notices concerning people subject to the sanctions imposed by the Security Council regime against the Taliban, Al-Qaida and their associates are a welcome development and Member States should distribute them widely to raise awareness and increase the effectiveness of the travel ban. I encourage the Security Council, and all Member States, to take necessary steps to further strengthen the travel ban.

65. We must also work to strengthen border control, in particular in developing countries with long, poorly defined and often mountainous frontiers. Parts of the United Nations system, including the World Bank, have been working to support the reform and modernization of border management systems, facilities and institutions, at the national, regional and international levels. I urge further work in this area and highlight the need for political support within relevant countries to implement improved border management practices.”

their attacks, to their targets and to the desired impact of their attacks.” Specifically, measures 13, 14, and 15 deal with border control, terrorist travel, and international information sharing.<sup>126</sup> Above all else, “defence of human rights...[is] a fundamental pillar” that underlies the U.N. counter-terrorism strategy. According to the U.N., the counter-terrorism away game does not consider its counter-terror measures as anathema to human rights. The Secretary General’s report affirms that there is no trade-off of human rights for security. In fact, ensuring security for humanity is the ultimate expression of human rights promotion.<sup>127</sup>

#### **D. HOME GAME: NATIONAL COUNTERTERRORISM STRATEGIES**

The most recent National Strategy for Combating Terrorism was released 5 September 2006. It outlines four short-term priorities of action that fall under the overall “Strategy for Winning the War on Terror.” The first of the four priorities is “Prevent attacks by terrorist networks.” It has three elements. The second of the three elements is “Deny terrorist entry to the United States and disrupt their travel internationally”:

***Deny terrorists entry to the United States and disrupt their travel internationally.*** Denying our enemies the tools to travel internationally and across and within our borders significantly impedes their mobility and

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<sup>126</sup> “United Nations Global Counter-Terrorism Strategy,” 8 September 2006, <http://www.un.org/terrorism/strategy/> (accessed 4 October 2006), 5.

“13. To step-up national efforts and bilateral, sub-regional, regional and international co-operation, as appropriate, to improve border and customs controls, in order to prevent and detect the movement of terrorists and to prevent and detect the illicit traffic in, inter alia, small arms and light weapons, conventional ammunition and explosives, nuclear, chemical, biological or radiological weapons and materials, while recognizing that States may require assistance to that effect.

14. To encourage the United Nations Counter Terrorism Committee and its Executive Directorate to continue to work with States, at their request, to facilitate the adoption of legislation and administrative measures to implement the terrorist travel-related obligations, and to identify best practices in this area, drawing whenever possible on those developed by technical international organizations such as the International Civil Aviation Organization, the World Customs Organization and the International Criminal Police Organization.

15. To encourage the Committee established pursuant to Security Council resolution 1267 (1999) to continue to work to strengthen the effectiveness of the travel ban under the United Nations sanctions regime against Al-Qaida and the Taliban and associated individuals and entities, as well as to ensure, as a matter of priority, that fair and transparent procedures exist for placing individuals and entities on its lists, for removing them and for granting humanitarian exceptions. In this regard, we encourage States to share information, including by widely distributing the International Criminal Police Organization.”

<sup>127</sup> Report of the Secretary-General, 2. “Effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing ones. Accordingly, the defence of human rights is essential to the fulfillment of all aspects of a counter-terrorism strategy.... Victims of terrorist acts are denied their most fundamental human rights. Accordingly, a counter-terrorism strategy must emphasize the victims and promote their rights.”

can inhibit their effectiveness. They rely on illicit networks to facilitate travel and often obtain false identification documents through theft or in-house forgery operations. We will continue to enhance the security of the American people through a layered system of protections along our borders, at our ports, on our roadways and railways, in our skies, and with our international partners. We will continue to develop and enhance security practices and technologies to reduce vulnerabilities in the dynamic transportation network, inhibit terrorists from crossing U.S. borders, and detect and prevent terrorist travel within the United States. Our efforts will include improving all aspects of aviation security; promoting secure travel and identity documents; disrupting travel facilitation networks; improving border security and visa screening; and building international capacity and improving international information exchange to secure travel and combat terrorist travel. Our National Strategy to Combat Terrorist Travel and our National Strategy for Maritime Security will help guide our efforts.<sup>128</sup>

The U.S. released another strategy, National Strategy to Combat Terrorist Travel (NSCTT), which melds together elements of the home and away games. NSCTT is founded on the principle that constraining terrorist travel/mobility is a critical front in the War on Terror that is being waged abroad and at home.<sup>129</sup> The National Counterterrorism Center (NCC) released the unclassified version of NSCTT on 2 May 2006. NSCTT submits a laundry list of initiatives implemented to counter terrorist travel and highlights challenges the U.S. faces in constraining terrorist mobility. John Scott Redd, Director, NCC, also emphasizes in his cover letter that the initiatives should account for the protection of U.S. citizens' civil liberties and should have limited impact on global trade.<sup>130</sup> NSCTT also adds to post-9/11 terrorist travel dialogue. The NCC's strategy has two pillars: Pillar I: Enhance US and Foreign Partner Capabilities to Constrain Terrorist Mobility Overseas and Pillar II: Deny Terrorists the Ability to Enter, Exit, and Travel Within the United States.<sup>131</sup> Each of the two strategic pillars has three objectives:

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<sup>128</sup> "National Strategy for Combating Terrorism," September 2006, [http://hosted.ap.org/specials/interactives/wdc/documents/wh\\_terror060905.pdf#search=%22national%20strategy%20for%20combating%20terrorism%22](http://hosted.ap.org/specials/interactives/wdc/documents/wh_terror060905.pdf#search=%22national%20strategy%20for%20combating%20terrorism%22) (accessed 5 September 2006), 18.

<sup>129</sup> National Counterterrorism Center, "National Strategy To Combat Terrorist Travel," 2 May 2006, [http://www.nctc.gov/docs/u\\_terrorist\\_travel\\_book\\_may2\\_2006.pdf](http://www.nctc.gov/docs/u_terrorist_travel_book_may2_2006.pdf) (accessed 5 September 2006), cover letter.

<sup>130</sup> Ibid., cover letter.

<sup>131</sup> National Counterterrorism Center, 2-3.

- Pillar I
  - Strategic Objective 1: Suppress Terrorists' Ability to Cross International Borders
  - Strategic Objective 2: Help Partner Nations Build Capacity to Limit Terrorist Travel
  - Strategic Objective 3: Deny Terrorists Access to Resources That Facilitate Travel
- Pillar II
  - Strategic Objective 1: Inhibit Terrorists from Crossing US Borders
  - Enhance US Government Capabilities to Detect and Constrain Terrorist Travel Within the United States
  - Strengthen US Identity Verification Systems<sup>132</sup>

To support the objectives, NCC highlights several initiatives that have been implemented. All three security solutions are made reference to amongst the two pillars, six strategic objectives, and fifty-four initiatives. References to providing standardized operational training and additional guidance to immigration, visa, and customs personnel are many and varied.<sup>133</sup> Training and guidance are highly valued and essential aspects of any multilateral or unilateral initiative targeted to constrain terrorist travel/mobility.

NSCTT provides compelling examples of the implementation of many training initiatives. Providing training and additional guidance is such a broad and diverse security solution which takes many forms in the post-9/11 security environment. At its most basic level, training is a form of information sharing, communication, and distribution of knowledge. Incorporating the latest terrorist travel techniques and disseminating best practices is indicative of a nascent system or program which characterizes the enhanced training efforts post-9/11. In addition to the several training initiatives, NSCTT also presents one specific reference to the implementation of NSEERS and SEVIS: “the ICE Compliance Enforcement Unit [CEU] oversees the generation and assignment of leads about individuals who have overstayed their visas or who have violated the National Security Entry-Exit Registration Program (NSEERS), [and] the Student and Exchange Visitor Information System (SEVIS)” (Pillar II, Strategic Objective 2, Coordination and Sharing Between State and Local Law Enforcement).<sup>134</sup>

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<sup>132</sup> National Counterterrorism Center, 2-3.

<sup>133</sup> Ibid., 7, 8, 15, 21, 27, 28, 31, 36.

<sup>134</sup> National Counterterrorism Center, 33.



To reiterate, the three security solutions are designed to help win both the away and home games. By each country winning their respective home game, then the win of the corresponding away games is more assured. The Task Force relates how the games can be won by border and immigration team key players:

[Terrorist] Mobility is an essential capability of terrorist organizations, often requiring terrorists to make contact with enforcement personnel at border crossings and other immigration processes. These points of contact represent vulnerabilities the terrorists and opportunities for counterterrorism officials.<sup>135</sup>

Immigration, visa, and customs personnel require standardized, current, operational training and additional guidance as well as technological tools such as SEVIS and NSEERS to effectively capitalize on opportunities to exploit terrorist travel/mobility vulnerabilities at the many points of contact with terrorists. Points of contact occur abroad, at the U.S. border and within the interior.

To fully capitalize on opportunities and to exploit vulnerabilities in terrorist travel/mobility abroad, terrorists must be identified and intercepted as far away from the U.S. as possible. By implementing the three key recommendations, the U.S. can “push out”<sup>136</sup> its borders and save time, money, and lives. Pushing out U.S. borders requires that the Department of State Consular Affairs embrace its role as “America’s Other Border Patrol.”<sup>137</sup> To fulfill this role, Consular Affairs must have domestic and international law enforcement, intelligence, immigration, visa, and customs information sharing, coordination, and cooperation. Chapter II offered a “home” and “away” game approach. The “home” and “away” game approach explains how the three key recommendations align and support multi- and unilateral counterterrorism strategies that are designed to disrupt terrorist travel/mobility abroad, at the border, and in-country. The multi- and unilateral strategies provide resolutions and provisions to enhance

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<sup>135</sup> Doris Meissner, et al., “Immigration and America’s Future: A New Chapter,” 62-63. “Terrorism by a few and migration by many are characteristic of an era of rapid communication and cheap transportation. But each presents distinct challenges, and the government needs to do more to focus on the distinct challenge -- and opportunity -- presented by terrorist travel.”

<sup>136</sup> U.S. Senate Committee on Governmental Affairs, “Summary of Intelligence Reform and Terrorism Prevention Act of 2004,” 21.

<sup>137</sup> Wenzel, 1.

international and domestic information sharing, coordination, and cooperation. Therefore, these counterterrorism strategies support and enable Consular Affairs in its role as “America’s Other Border Patrol.”

### **III. IMPLEMENTATION OF THREE KEY SECURITY SOLUTIONS**

Chapter II demonstrated that post-9/11 implementation of the recommendations is justified and validated by both multi- and unilateral counterterrorism strategies. Implementation of the three security solutions was directed and mandated post-9/11. 9/11 was a catalyst for the immense political, bureaucratic, and legislative response that ensued. Therefore, the policy directives and legislative mandates that have prescribed these policy options deserve mentioning. Chapter III will describe post-9/11 implementation of the three key recommendations/security solutions for immigration: 1) provide standardized operational training and additional guidance to immigration, visa, and customs personnel, 2) establish SEVIS, and 3) develop and implement NSEERS. This analysis spans the five year period following the events of 9/11. This analysis will be used to develop an assessment of the three key recommendations. This assessment will be presented in Chapter IV.

Pre-9/11 immigration, visa, and customs systems were characterized by a general lack of counterterrorism focus. Implementation of the key post-9/11 recommendations offers the U.S. opportunities to enhance homeland security by exploiting terrorist travel and mobility vulnerabilities. By leveraging the capabilities of trained home and away game key players, SEVIS, and NSEERS, the U.S. may be able to effectively degrade terrorist ability to travel, to enter the U.S., and to perpetrate attacks.

#### **A. PRESIDENTIAL DIRECTIVE AND LEGISLATIVE MANDATES**

Post-9/11, a Presidential directive and several legislative mandates have called for the implementation of the three key security solutions. The directive and mandates offer provisions aimed at capitalizing on opportunities to exploit terrorist travel/mobility abroad and at home. The many resolutions will be introduced in this section, highlighting the crucial role of the away game and its consular key players.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act classifies the entry-exit and foreign student tracking systems as tools required to intercept terrorists abroad and at the border. The USA PATRIOT Act of 2001 also included a provision (Section

416) to fully implement the foreign student visa tracking system and to “strengthen the monitoring aspect” by 1 January 2003.<sup>138</sup> The post-9/11 legislation also requested the implementation of an integrated entry-exit system (Section 414).<sup>139</sup> The Act authorized law enforcement data sharing with consular officers to enhance the security emphasis of visa decisions (Section 403). Section 414 of the Act pertains to Visa Integrity and Security which conveys the importance of the away game and the crucial duty of consular officers.<sup>140</sup> Consular officers who have access to law enforcement information may be able to deny potential terrorists visas and, therefore, deny terrorist admission to the U.S.

Training mandates do appear in other post-9/11 statutory imperatives such as the Homeland Security Act of 2002 and the Enhanced Border Security and Visa Entry Reform Act of 2002. Section 428 of the Homeland Security Act mandates consular officer training and confers enormous homeland security authorities and responsibilities on them.<sup>141</sup> The Homeland Security Act of 2002 also contained a provision (Section 442) related to SEVIS, yet the Act made no mention of an entry-exit system.<sup>142</sup>

The Enhanced Border Security and Visa Entry Reform Act of 2002 directed improvements “to the visa issuance process abroad and immigration inspections at the border.”<sup>143</sup> It is the one piece of legislation that has mandated all three key recommendations. Training regimen enhancements (Sections 101 and 305), an integrated entry-exit system initiative (Section 302),<sup>144</sup> and the establishment of an electronic means to monitor and verify the status of students and exchange visitors (Section 501) were

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<sup>138</sup> “Enhanced Border Security and Visa Entry Reform Act of 2002 Pub. L. No. 107-173 (H.R. 3525) Section-by-Section Explanation,” [http://www.ofr.harvard.edu/additional\\_resources/summary\\_of\\_Enhanced\\_Border\\_Security\\_Reform\\_Act\\_HR3525.pdf](http://www.ofr.harvard.edu/additional_resources/summary_of_Enhanced_Border_Security_Reform_Act_HR3525.pdf) (accessed 11 August 2006), 7.

<sup>139</sup> Vaughan, 9.

<sup>140</sup> Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001, 107<sup>th</sup> Congress First Session, 26 October 2001, <http://f11.findlaw.com/news.findlaw.com/cnn/docs/terrorism/hr3162.pdf> (accessed 14 November 2006), 73-74 and 83-84.

<sup>141</sup> Ibid., 55.

<sup>142</sup> Public Law 107-296, Homeland Security Act of 2002, 107<sup>th</sup> Congress, 25 November 2002, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ296.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ296.107.pdf) (accessed 14 November 2006), 53-57 and 59.

<sup>143</sup> Garcia and Wasem, 4.

<sup>144</sup> Ibid., 4.

among its many provisions.<sup>145</sup> Specifically, the Act increased access to information and enhanced training for overseas consular key players (Sections 305 and 202).<sup>146</sup> The legislation also authorized the commensurate funds for such information sharing technologies and training on the use of these technologies. In addition to shared law enforcement and intelligence information, consular officials would also use the integrated entry-exit system to screen visa applicants.<sup>147</sup>

The Intelligence Reform and Terrorist Prevention Act of 2004 will round out the directive and legislative mandate discussion. TITLE VII of the Act is aptly entitled “9/11 Commission Implementation Act of 2004.” Subtitle A of TITLE VII “implements 9/11 Commission recommendations regarding the importance of using all elements of national power...to win the war on terror.”<sup>148</sup> Counterterrorism, standardized, and operational training and a biometric entry-exit system are among the recommendations implemented by this post-9/11 legislation. The recommendations are mandated by Subtitle B “Terrorist Travel and Effective Screening,” Sections 7201 (Counterterrorist Travel Intelligence) and 7208 (Biometric Entry and Exit Data System).<sup>149</sup> Based on 9/11 Commission recommendations, immigration and consular personnel training must encompass terrorist travel patterns, trends, practices, and tactics that would be derived from intelligence and law enforcement information collection, analysis, and dissemination.<sup>150</sup> The National Counterterrorism Center’s (NCC) unclassified version of the National Strategy to Combat Terrorist Travel (NSCTT) released on 2 May 2006 and discussed in the previous chapter was mandated by Subtitle A of this Act. The NSCTT was to reflect this new focus on disrupting terrorist travel/mobility. The strategy covers

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<sup>145</sup> Ruth Ellen Wasem, “Nonimmigrant Overstays: Brief Synthesis of the Issue,” *CRS Report for Congress*, 22 May 2006, <http://www.usis.it/pdf/other/RS22446.pdf> (accessed 5 October 2006), 5.

<sup>146</sup> Garcia and Wasem, 4.

<sup>147</sup> “Enhanced Border Security and Visa Entry Reform Act of 2002 Pub. L. No. 107-173 (H.R. 3525) Section-by-Section Explanation,” 5.

<sup>148</sup> U.S. Senate Committee on Governmental Affairs, “Summary of Intelligence Reform and Terrorism Prevention Act of 2004,” 24 December 2006, [http://www.fas.org/irp/congress/2004\\_rpt/s2845-sum.pdf](http://www.fas.org/irp/congress/2004_rpt/s2845-sum.pdf) (accessed 14 November 2006), 18.

<sup>149</sup> Public Law 108-458, Intelligence Reform and Terrorism Prevention Act of 2004, 108<sup>th</sup> Congress Second Session, 17 December 2004, [http://www.nctc.gov/docs/pl108\\_458.pdf](http://www.nctc.gov/docs/pl108_458.pdf) (accessed 15 November 2006), 172-177.

<sup>150</sup> *Ibid.*, 173.

the development of Terrorist Travel (Section 7215) and Training Programs (Section 7201) which were also mandated by the Act.<sup>151</sup>

The legislation also contains specific provisions that emphasize the crucial role of consular officials and their anti-fraud and cross training. Section 7203 (Responsibilities and Functions of Consular Officers) authorized the Secretary of State to hire an additional 150 consular officers each fiscal year from 2006 through 2009.<sup>152</sup> Consular officer training enhancements were also specified: “In accordance with section 7201(d) of the 9/11 Commission Implementation Act of 2004, and as part of the consular training provided to such officers by the Secretary of State, such officers shall also receive training in detecting fraudulent documents and general document forensics and shall be required as part of such training to work with immigration officers conducting inspections of applicants for admission into the United States at ports of entry.”<sup>153</sup> To supplement hiring increases and training enhancements, the Act also “ensures that there will be at least one full-time anti-fraud specialist at all high-fraud diplomatic and consular posts where visas are issued unless there is a full-time employee of the Department of Homeland Security assigned to such post pursuant to Section 428 of the Homeland Security Act [of 2002].”<sup>154</sup>

The Act underscores the importance of the away game and promotes international information exchange in Section 7210: “Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings: (1) The exchange of terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits [and] (2) The further away from the borders of the United States that screening occurs, the more security benefits the United States will gain.”<sup>155</sup>

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<sup>151</sup> Public Law 108-458, Intelligence Reform and Terrorism Prevention Act of 2004, 196 and 175.

<sup>152</sup> *Ibid.*, 177.

<sup>153</sup> *Ibid.*, 178.

<sup>154</sup> U.S. Senate Committee on Governmental Affairs, “Summary of Intelligence Reform and Terrorism Prevention Act of 2004,” 20.

<sup>155</sup> Public Law 108-458, Intelligence Reform and Terrorism Prevention Act of 2004, 188.

Emphasizing the away game approach enables the U.S. to “push out our borders” by “increase[ing] the screening of threatening individuals before they reach the U.S.”<sup>156</sup>

Pre-9/11 immigration, visa, and customs systems did not have a counterterrorism focus or role. These systems were designed, postured, and operated to prevent the entry of illegal aliens, known criminals, intending immigrants, and drug smugglers. Concerns, priorities, and funding to prevent their entry far outweighed those of countering terror. There is no assurance that directives and legislative mandates with a counterterror emphasis would have produced different results on 9/11. Preventing terrorists from traveling to, entering the U.S., and attacking the homeland was not a priority. Amidst more pressing political, social, and economic concerns such as illegal immigration, it is not surprising that immigration, visa, and customs policies and mandates did not emphasize countering the terrorist threat.

The immediate post-9/11 legislation was enacted in response to intense political and public reactions to executed terrorist attacks against the U.S. Once the initial shock and the response fervor wore off, the political will and emphasis also withered away until reemerging political and public concerns and fears about the next attack would prompt reinvigoration, expansion, and reemphasis of the three key recommendations. Although well-intentioned, the immediate post-9/11 legal imperatives were seemingly based on hindsight and damage control. Each successive policy directive or legal mandate called for a reinvigoration and/or expansion of the key recommendations. The legislative process has been a learning process. With the passage of time, lessons can be learned and assessments can be derived in respect to the mandated and implemented policies. This thesis offers such an assessment.

## **B. IMPLEMENTATION OF THREE KEY RECOMMENDATIONS**

### **1. Training and Additional Guidance**

Information regarding pre-9/11 immigration, visa, and customs systems gaps/weaknesses is scattered throughout the literature. *9/11 and Terrorist Travel*, is the most informative and comprehensive source for explanations of these gaps/weaknesses. The report captures the state of pre-9/11 training and guidance efforts and covers a span

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<sup>156</sup> U.S. Senate Committee on Governmental Affairs, “Summary of Intelligence Reform and Terrorism Prevention Act of 2004,” 21.

of more than twenty years. The post-9/11 training and guidance discussion spans five years, yet *9/11 and Terrorist Travel* only covers a small portion of that time. Additional information regarding post-9/11 training and guidance efforts is scattered throughout the literature. Such an arrangement is fitting given the nonstandardized and decentralized nature of training and guidance efforts. Each agency of the sprawling U.S. bureaucracy—INS, Department of State, Customs Service, CIA, and FBI--was responsible for its own training program. In particular, the INS' pre-9/11 training and guidance efforts would not reflect a counterterrorism role: "Neither the INS nor others in government ever viewed the agency as having a pivotal role in preventing terrorist entry into the United States."<sup>157</sup>

In the five years since 9/11, implementation of post-9/11 training and guidance efforts has been piecemeal and decentralized. Capturing all the individual and/or collective agency initiatives that have been implemented in the five years since 9/11 is challenging. Post-9/11 training and guidance assessment data is also disparate, diverse, and challenging to capture. The training and additional guidance programs that were implemented responded to the pre-9/11 gaps/weaknesses identified by the 9/11 Commission. Deficiencies in pre-9/11 inspector, counterterrorism, primary and secondary inspection, document fraud, and database training programs were acknowledged, and attempts to address the gaps/weaknesses are evident. For the most part, recommendations calling for operational, standardized, and continuing counterterrorism training and additional guidance have been fulfilled. Training and additional guidance must be based on current and sustained law enforcement and intelligence information. This information must be shared with immigration, visa, and customs officials. This section presents an overview of the myriad of post-9/11 training and guidance implementation efforts.

The Homeland Security Act of 2002 and the Enhanced Border Security and Visa Entry Reform Act of 2002 mandated the implementation of training and guidance efforts. Section 428 of the Homeland Security Act mandates counterterrorism, operational, language, and cross consular training and vests consular officials with homeland security

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<sup>157</sup> *9/11 and Terrorist Travel*, 136. Classification concerns prevented intelligence and law enforcement agencies from sharing the information they collected with immigration officials.



authority and responsibility.<sup>158</sup> The Enhanced Border Security and Visa Entry Reform Act of 2002 authorized the most training initiatives and programs compared to the other legislative mandates. These specific sections will be presented. Sections 101 (a), (c), and (d) authorized funding for additional hiring and ongoing training of personnel to secure the U.S. northern and southern borders.<sup>159</sup> The Attorney General obtained approval to hire, at minimum, 200 INS inspectors, 200 investigative personnel, and their associated support staffs in each of the fiscal years 2003 through 2006.<sup>160</sup> Section 101(c) appropriated resources for ongoing training of INS officials along the border, continued cross-training of border personnel with other agencies, and training of immigration officers in the use of lookout databases and the monitoring of passenger traffic.

Section 101(d) also allocated funds for and directed the Secretary of State to “implement enhanced security measures for the review of visa applicants, to adequately staff the facilities and programs associated with such reviews, and to provide ongoing training for consular officers and diplomatic security agents to carry out this mandate.”<sup>161</sup> An entire section is dedicated to the training of consular away game key players. Section 305 specifically calls for consular officer training regimen enhancements. This provision requires that consular officials receive “specific training in identifying inadmissible aliens, in interagency and international intelligence sharing regarding terrorism, and in cultural sensitivity toward visa applications.” This section also directs federal law enforcement and intelligence communities to share information with consular officials charged with screening visa applicants. Toward this end, funds were authorized “as necessary to implement these requirements.”<sup>162</sup>

To bolster security efforts abroad, Section 304 relates to the establishment of terrorist lookout committees at each visa-issuing embassy or consulate. The committees were designed to utilize consulate resources to identify terrorists by collecting and analyzing terrorist information. The committees would also perform their lookout

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<sup>158</sup> Public Law 107-296, Homeland Security Act of 2002, 55.

<sup>159</sup> “Enhanced Border Security and Visa Entry Reform Act of 2002 Pub. L. No. 107-173 (H.R. 3525) Section-by-Section Explanation,” 1.

<sup>160</sup> Ibid., 1.

<sup>161</sup> Ibid., 1-2.

<sup>162</sup> Ibid., 5.

function by alerting the appropriate consular officials of suspected terrorists. The committees would provide additional manpower and oversight capabilities by ensuring the names of suspected terrorists are loaded into the various lookout databases.<sup>163</sup> This section also requires consular officers receive operational training to enhance their identification of terrorists and other threats.<sup>164</sup> Section 305 affirms that the effectiveness of an enhanced training regimen is reliant upon law enforcement information and intelligence shared with consular officers responsible for screening visa applicants.<sup>165</sup>

Immigration, visa, and customs training enhancements would be bolstered by Section 403 which is intended to mitigate the travel facilitation culture, environment, and pressures that the personnel have grappled with. This section repeals Section 286(g) of the Immigration and Nationality Act of 1986 which mandated that the INS complete inspection of arriving passengers within 45 minutes of their arrival at U.S. ports of entry.<sup>166</sup> To accommodate this inspection time extension, the INS was required to fully staff ports of entry at adequate levels to handle customer flow and meet inspection time requirements. Above all else, the safety and security of the U.S. should not be compromised.<sup>167</sup> Finally, Sections 5301, 5302, 5303, and 5304 of Subtitle C, entitled Visa Requirements of the Intelligence Reform and Terrorism Prevention Act of 2004 contains various provisions for additional visa adjudication processes such as: in-person interviews of visa applicants, visa application requirements, effective dates, and revocation of visas and other travel documentation.<sup>168</sup>

In its quest to improve odds of winning the away game, the Department of State has enhanced its basic consular course. On 17 October 2003, the Department lengthened its formal consular course (ConGen) from 26 to 31 days. The curriculum was expanded

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<sup>163</sup> “Enhanced Border Security and Visa Entry Reform Act of 2002 Section-by-Section Explanation,” 30 November 2001, <http://www.senate.gov/~kennedy/statements/01/11/2001C05731.html> (accessed 11 August 2006), 5.

<sup>164</sup> Ibid., 5. “The training that most foreign service officers have received is oriented toward identifying visa fraud generally and immigrant intent in nonimmigrant visa applications. Instead, consular officers should focus more attention on persons who pose a safety or security threat.”

<sup>165</sup> Ibid., 5.

<sup>166</sup> “Enhanced Border Security and Visa Entry Reform Act of 2002 Pub. L. No. 107-173 (H.R. 3525) Section-by-Section Explanation,” 7.

<sup>167</sup> Ibid., 7.

<sup>168</sup> Public Law 104-208, Illegal Immigration Reform and Immigration Responsibility Act of 1996, 99.

to include lessons on visa security, counterterrorism awareness, and interviewing techniques. Two days of the course are devoted to teaching methods to identify fraud and deception by applicants, a half-day counterterrorism program hosted at CIA headquarters, and a module on terrorist travel patterns.<sup>169</sup> As counterterror measures, standardized, operational training and guidance initiatives and programs are supplemented by the implementation of SEVIS and NSEERS.

## **2. SEVIS**

*The 9/11 Commission Report* and specifically *9/11 and Terrorist Travel* identify a multitude of pre-9/11 gaps/weaknesses of the border system architecture which attributed to the failings of U.S. immigration, customs, and visa systems. Along with training deficiencies, other gaps/weaknesses contributed to the occurrence of 9/11. *9/11 and Terrorist and Travel* argues that two efforts would have armed consular officials and inspectors with crucial counterterrorism information—a system to track foreign student visa compliance and a program to track temporary/nonimmigrant visitors' entry to and exit from the United States. These two programs would have enhanced the counterterrorism focus of visa and admissibility decisions.<sup>170</sup> SEVIS and NSEERS would be implemented to provide crucial counterterrorism information.

This thesis focuses on three pre-9/11 gaps/weaknesses and the recommendations prescribed to address them. The remaining two gaps/weaknesses are: ineffective foreign student visa compliance and nonexistent entry-exit system. 9/11 Commission research efforts led to a pivotal public hearing statement. This statement corroborates the gaps/weaknesses findings of this thesis. The 9/11 Commission's seventh public hearing was held January 26 - 27, 2004 in Washington, D.C. The two-day investigative hearing developed facts and circumstances relating to border security. Susan Ginsberg, Senior Counsel to the Commission, highlighted the need for SEVIS and NSEERS to address two pernicious pre-9/11 gaps/weaknesses: "Two programs might have helped detect such violations. One dealt with violations of student status. The other dealt with overstays."<sup>171</sup> If foreign student compliance/tracking and entry-exit systems were in-

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<sup>169</sup> *9/11 and Terrorist Travel*, 150.

<sup>170</sup> *Ibid.*, 98.

<sup>171</sup> National Commission on Terrorist Attacks Upon the United States, "Entry of the 9/11 Hijackers Into the United States," 8.

place and in working order pre-9/11, these and other student status and overstay violators could have been detected. Providing standardized operational training and guidance to personnel could have enabled them to leverage the capability of such systems.

*9/11 and Terrorist Travel* asserts, “As early as 1972, the INS was concerned that some foreign students could pose a threat to national security.”<sup>172</sup> To address these concerns post-9/11, a Presidential directive was published, and legislative mandates were enacted. Seven weeks after the events of 9/11, Homeland Security Presidential Directive-2 (HSPD-2) with subject line “Combating Terrorism Through Immigration Policies” was released on 29 October 2001. One of the six policy areas of HSPD-2 is “Abuse of International Student Status.” HSPD-2 mandated the implementation of measures to end the abuse of student visas. The program was to track the status of foreign students who receive visas. Pertinent information about the student should be collected: the proposed major course of study, the status of the individual as a full-time student, the classes in which the student enrolls, and the source of the funds supporting the student’s education.<sup>173</sup>

Section 416 of the USA PATRIOT Act of 2001 directed the expansion of the foreign student tracking/monitoring program to include other approved educational institutions (i.e., flight, language training vocational schools).<sup>174</sup> It authorized \$36.8 million in appropriations to fund this expansion.<sup>175</sup> Section 416 mandated that the INS have the foreign student tracking system established and running by 1 January 2003.<sup>176</sup> Section 501 of the Enhanced Border Security and Visa Entry Reform Act of 2002 covers

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<sup>172</sup> *9/11 and Terrorist Travel*, 98.

<sup>173</sup> Homeland Security Presidential Directive-2, “Combating Terrorism Through Immigration Policies,” National Security Presidential Directives, 29 October 2001, <http://www.fas.org/irp/offdocs/nspd/hspd-2.htm> (accessed 11 August 2006), 2. “The United States benefits greatly from international students who study in our country. The United States Government shall continue to foster and support international students....The INS, in consultation with the Department of Education, shall conduct periodic reviews of all institutions certified to receive nonimmigrant students and exchange visitor program students. These reviews shall include checks for compliance with record keeping and reporting requirements. Failure of institutions to comply may result in the termination of the institution’s approval to receive such students.”

<sup>174</sup> Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001, 354-355.

<sup>175</sup> Siskin, “Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS),” 2.

<sup>176</sup> *Ibid.*, 2.

the foreign student tracking system. This provision requires schools to notify the INS when a student has failed to report for school more than 30 days after the registration deadline for classes.<sup>177</sup> This provision instructs the collection of additional data to include: 1) the student's date and port of entry, dates of school enrollment and when the student departs school (e.g., graduates, quits), and the student's degree program or field of study.<sup>178</sup>

Section 501 also established an interim system to be used until the full program was implemented. Under the temporary system, the State Department was prohibited from issuing student visas until 1) the agency received electronic evidence of acceptance from an approved academic or other institution and 2) the consular officer adequately reviewed the applicant's visa record. Once a visa is issued, the Secretary of State must transmit to the INS notice that the visa has been issued, the INS must notify the academic institution that the alien has been admitted to the U.S., and the institution must notify the INS no later than 30 days after the class registration deadline should the alien fail to enroll. In addition, within 30 days of enactment, the INS must provide the State Department with a list of approved institutions authorized to receive immigrants.<sup>179</sup>

SEVIS became operational for foreign students on 15 February 2003.<sup>180</sup> SEVIS is a computerized process designed to collect, maintain, and manage foreign student and exchange visitor data. SEVIS replaced a manual, paperwork-intensive process. SEVIS leverages technology by allowing real time, accurate data to be updated and maintained through a web-based application. Throughout foreign students' and exchange visitors' stays in the U.S., schools and exchange program administrators "transmit electronic information and event notifications" to DHS and the Department of State via the Internet.<sup>181</sup> By populating SEVIS with data, DHS, DOS, schools, and exchange programs enable SEVIS to identify students who have violated the terms of their foreign

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<sup>177</sup> "Enhanced Border Security and Visa Entry Reform Act of 2002 Pub. L. No. 107-173 (H.R. 3525) Section-by-Section Explanation," 8.

<sup>178</sup> *Ibid.*, 8.

<sup>179</sup> *Ibid.*, 8.

<sup>180</sup> Siskin, "Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)," 1.

<sup>181</sup> Institute of International Education, "BACKGROUND: Student and Exchange Visitor Information System (SEVIS) and Related Issues," 19 September 2003, <http://opendoors.iienetwork.org/?p=35847> (accessed 5 February 2006), 1.

student or exchange visitor visas.<sup>182</sup> The challenge of tracking students which comprise about 10.5% of the total nonimmigrant issuances is expanded to include the entire nonimmigrant population. NSEERS would be implemented to track all nonimmigrant/temporary visa holders.<sup>183</sup>

### **3. NSEERS**

In May 2002, U.S. Attorney General John Ashcroft mandated the development of “an entry-exit registration system at selected ports of entry.”<sup>184</sup> On 5 June 2002, the U.S. Department of Justice offered a proposal for a National Security Exit and Entry Registration System, or NSEERS. Attorney General Ashcroft remarked that NSEERS is a first step on the road to developing a congressionally mandated entry-exit system to track nearly all foreign visitors.<sup>185</sup> On 13 June 2002, INS proposed a measure to implement NSEERS on 13 June 2002. The final provision was issued on 12 August 2002.<sup>186</sup> INS implemented NSEERS on the one year anniversary of 9/11.<sup>187</sup>

The sheer number of nonimmigrant/temporary visa categories, the overwhelming volume of entries and admissions, and the lack of data on the actual number of visa “overstayers,” complicate the job of tracking the entry and exit of U.S. visitors. Adding to this daunting task of tracking visitors are the numerous categories of nonimmigrant visas and the different interpretations of visa issuance and admission. Jeanne Batalova informs that there are more than seventy classes of temporary/nonimmigrant visas.<sup>188</sup> Nonimmigrant visa issuance and admission/entry statistics can be counted and interpreted in different ways. These disparities can be attributed to the differences in operating procedures that exist between the visa-issuing agency, Department of State, and the

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<sup>182</sup> U.S. Department of Homeland Security Office of Inspector General, Office of Inspections and Special Reviews, “Review of the Immigration and Customs Enforcement’s Compliance Enforcement Unit,” OIG-05-50, September 2005, [http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_05-50\\_Sep05.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_05-50_Sep05.pdf) (accessed 12 November 2006), 8-9.

<sup>183</sup> Vaughan, 3.

<sup>184</sup> *9/11 and Terrorist Travel*, 155.

<sup>185</sup> Andorra Bruno, “Immigration: Alien Registration,” *CRS Report for Congress*, 6 January 2004, 4.

<sup>186</sup> *Ibid.*, 5.

<sup>187</sup> *9/11 and Terrorist Travel*, 155.

<sup>188</sup> Jeanne Batalova, “The Growing Connection Between Temporary and Permanent Immigration Systems,” *Insight*, no. 14, January 2006, [http://www.migrationpolicy.org/ITFIAF/TFI\\_Batalova.pdf](http://www.migrationpolicy.org/ITFIAF/TFI_Batalova.pdf) (accessed 5 September 2006), 12.

visitor-screening agency, Department of Homeland Security. Therefore, confusion arises in regards to who should be counted, who has arrived and granted entry, and who has exited the U.S.<sup>189</sup>

The existence of different methods adds to the confusion surrounding and contributes to the lack of accounting of nonimmigrant entries/exits. This confusion and lack of accounting add to the arguments for the student and entry-exit tracking systems. Student, diplomat, and temporary worker nonimmigrants enter and leave the U.S. more than once in a give year. Each entry and departure is documented separately with the issuance of an I-94 Form. Given this data collection procedure, temporary/nonimmigrant visitors may enter more than once in given year. This causes the number of admissions/entries to exceed the number of applicants issued nonimmigrant visas.<sup>190</sup> All of these accounting challenges reveal and contribute to the problematic lack of nonimmigrant overstay tracking.

Prescribed as a solution, NSEERS requires that a subgroup of nonimmigrants “register with immigration authorities either at a port of entry or a designated ICE office in accordance with the special registration procedures.” This subset of nonimmigrants subject to special registration procedures would register at specially designated ports when leaving the U.S. They must report in-person to an immigration officer at the designated port on their departure date.<sup>191</sup> The Department of Justice estimated that NSEERS would account for about 100,000 visitors in its first year of implementation.<sup>192</sup> The basic design, intent, and purpose of the entry-exit and foreign student tracking provisions of the Enhanced Border Security and Visa Entry Reform Act of 2002 are similar to what was mandated by the USA PATRIOT Act (Section 414).<sup>193</sup> The intent

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<sup>189</sup> Batalova, 12.

<sup>190</sup> Grieco, 5. Form I-94s are used to track visitors and mitigate visa overstay. Upon arrival at the border, temporary visitor fills out Form I-94 and keeps bottom half to return at departure. Inspectors at the border authorize (or set)/document period of admission. Nancy R. Kingsbury, “Homeland Security: Overstay Tracking is a Key Component of a Layered Defense,” *General Accounting Office Report*, Testimony Before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives, 16 October 2003, <http://www.gao.gov/news.items/d041070t.pdf> (accessed 15 November 2006), Summary and 3.

<sup>191</sup> U.S. Immigration and Customs Enforcement, “Special Registration,” 1-2.

<sup>192</sup> Bruno, 5.

<sup>193</sup> Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001, 353-354.

and purpose of NSEERS is to “cover arriving nonimmigrants from [twenty-five] designated countries, as well as other arriving nonimmigrants who are determined to pose an elevated national security risk.”<sup>194</sup>

*9/11 and Terrorist Travel* reports that NSEERS was implemented in phases. On 11 September 2002, INS inspectors (now CBP inspectors post-9/11), were required to register nonimmigrant foreign nationals applying for admission to the U.S. who were citizens of the five state sponsors of terrorism: Iran, Iraq, Sudan, Libya, and Syria.<sup>195</sup> One month later, all ports of entry would have the new registration database and equipment installed. According to the internal INS memo, effective 1 October 2002, inspectors were also required to register nonimmigrant males between 16 and 45 years of age who were citizens of Pakistan, Saudi Arabia, and Yemen.<sup>196</sup> Several other Federal Register notices were published and each one would add to the list of countries that required registration of its male nonimmigrant population. On 22 November and 18 December 2002 and 21 February 2003, published notices also required registration of nonimmigrant male citizens or nationals from Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Bangladesh, Egypt, Indonesia, Jordan, and Kuwait.<sup>197</sup>

When nonimmigrant males from the selected countries arrive the U.S. to request entry, they are subject to special registration requirements. First, they are screened against the Interagency Border Inspection System (IBIS) by inspectors at ports of entry. If an alien applying for entry is identified by IBIS as being subject to NSEERS registration, the alien is referred to secondary inspection for NSEERS registration processing. In the secondary inspection, they are fingerprinted, photographed, and checked against four databases of known criminals and terrorists. They provide personal information (e.g., biography, employment, school, intended address in the U.S., points of contact, and credit card information)<sup>198</sup> and their plans and intentions while in-country.

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<sup>194</sup> Bruno, Summary.

<sup>195</sup> *9/11 and Terrorist Travel*, 156.

<sup>196</sup> *Ibid.*, 156.

<sup>197</sup> Bruno, 7.

<sup>198</sup> *9/11 and Terrorist Travel*, 156.



The original provisions of NSEERS required aliens to register at a port of entry for 30-day and annual re-registrations. This rule was amended on 2 December 2003, which suspended the automatic 30-day and annual registration requirements.<sup>199</sup> If remaining in-country more than 30 days, they were required to appear at an immigration office between day 30 and day 40 to verify visa compliance, proof of residence, and school enrollment. To close the entry-exit loop, special registrants must report their exit at the port of departure when exiting the U.S.<sup>200</sup>

NSEERS is part of a family of post-9/11 tracking systems that include US-VISIT (US Visitor and Information Status Indication Technology) and SEVIS. They are designed to exploit the vulnerabilities of terrorist travel and mobility. Their implementation affords the U.S. basic accounting and tracking measures of legal visitors, both benign and potentially malignant. Eventually, US-VISIT will subsume the functions of the NSEERS program.<sup>201</sup> This fact is the basis for DHS's rationale to amend the original rules of NSEERS:

In the supplementary information...DHS offered several reasons why the suspension of the automatic re-registration requirements is appropriate and advantageous. It indicated that there are other tracking systems, including US-VISIT and SEVIS, that can help ensure that NSEERS registrants remain in compliance with the terms of their visas and admissions. In addition, DHS stated that suspending the 30-day and annual registration requirements "will reduce the burden on those required to register under current regulations, as well as to DHS."<sup>202</sup>

Chapter III has presented the post-9/11 implementation of the three key security solutions. The security solutions were implemented to stop terrorists from traveling and entering the U.S. Implementation of the three security solutions was directed and

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<sup>199</sup> Bruno, Summary. Since most of the visitors registered in NSEERS are students, business travelers, or visiting relatives, the 30-day and annual re-registration process was developed to verify locations, activities, and confirm departure. Individuals registered in NSEERS are now only required to appear for re-registration when deemed necessary (on a case-by-case basis) by DHS.

Under the new rule, DHS will decide which registrants must appear at a DHS ICE office for one or more additional registration interviews to determine whether they are in compliance with the conditions of their nonimmigrant visa status and admission. For some aliens, these interviews may be more frequent than the prior 30-day and annual re-registration requirements. Bruno, 11.

<sup>200</sup> Ibid., 5.

<sup>201</sup> *9/11 and Terrorist Travel*, 158.

<sup>202</sup> Bruno, 11.

mandated post-9/11 by a Presidential directive and several legislative mandates. The events of 9/11 caused a political, bureaucratic, and legislative stir, resulting in the publishing of the Homeland Security Presidential Directive-2 (HSPD-2) and the enactment of the USA PATRIOT Act of 2001, the Homeland Security Act of 2002, the Enhanced Border Security and Visa Entry Reform Act of 2002, and the Intelligence Reform and Terrorist Prevention Act of 2004. The directive and legislative mandates give immigration, visa, and customs systems a counterterrorism focus and confer homeland security responsibilities upon them. The preceding analysis of current policy prescription and implementation covers the five-year period following the September 11 attacks. This analysis will be used to develop an assessment of the three key recommendations. Implementing training and guidance efforts for home and away game key players allows them to leverage the capabilities of other implemented security solutions such as SEVIS and NSEERS. Through the implementation of the three security solutions, the U.S. may be able to effectively degrade terrorist ability to travel, to enter the U.S., and to perpetrate attacks. An assessment of the effectiveness of the recommendations to achieve this aim/objective will be presented in the following chapter.

## **IV. ASSESSMENT OF THREE KEY SECURITY SOLUTIONS**

Assessing the post-9/11 implementation of the three recommendations is essential for homeland security prioritization and resource allocation. Analysis of their effectiveness as counterterror measures should impact the decisions of policymakers, immigration, visa, customs, and border security officials. Assessments that analyze their ability to prevent terrorist entry are valuable and needed. Such assessments will help decision makers determine if the key recommendations should be given the appropriate priority and receive the commensurate funding.

Schneier's five-step model presents a method to analyze the three key recommendations: 1) provide standardized operational training and additional guidance to immigration, visa, and customs personnel, 2) establish SEVIS, and 3) develop and implement NSEERS. The five steps of Schneier's model are as follows:

**Step 1: What assets are you trying to protect?**

**Step 2: What are the risks to these assets?**

**Step 3: How well does the security solution mitigate the risk?**

**Step 4: What other risks does the security solution cause?**

**Step 5: What trade-offs does the security solution require?<sup>203</sup>**

This model was applied to assess the post-9/11 implementation and effectiveness of the three recommendations, or "security solutions." In regards to the three key recommendations, the answers to questions 1. and 2. of Schneier's model are the same and will not be restated in the subsequent assessments:

**Step 1: What assets are you trying to protect?**

America (its citizens and noncitizens, critical infrastructure, economy, morale)

**Step 2: What are the risks to these assets?**

Terrorists enter the U.S., and they target America for attack.

By consulting experts from various fields, answers to questions 3, 4, and 5 of Schneier's model will be derived. These answers will form the assessments of the three key recommendations and will be used to develop Chapter IV. Chapter IV ends with the conclusion of this thesis.

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<sup>203</sup> Schneier, 233-245.

## **A. SCHNEIER'S 5-STEP MODEL: ASSESSING SECURITY SOLUTIONS**

### **1. Training and Guidance**

#### **Step 3: How well does the security solution mitigate the risk?**

Training is one of the critical counterterror measures that may stop terrorists from entering and attacking the U.S. In addition to the 9/11 Commission, the U.N., NCC, Center for Immigration Studies, National Immigration Forum, Immigration Policy Center, Migration Policy Institute, GAO, CRS, Janice Kephart, Mark Krikorian, Michael O'Hanlon, et al., Doris Meissner, Margaret Stock and Benjamin Johnson, Jay Carafano, Richard Stana, and Deborah Waller Meyers advocate training and additional guidance as a security solution. Conversely, the overabundance of advocates is not matched by sources that provide implementation progress and effectiveness assessments of training and guidance programs. Therefore, forging a direct link between enhanced training and guidance efforts and stopping terrorist entrance is challenging.

The many advocates discuss the gaps/weaknesses of pre-9/11 immigration, visa, and customs training programs and proclaim that the programs should have a counterterrorism focus. Post-9/11, immigration, visa, and customs personnel are now viewed as having a counterterrorism role. The lessons of 9/11 advised that terrorists will try to exploit legal, temporary/nonimmigrant systems. Therefore, training and guidance programs that relate to these systems were enhanced, and the scrutiny of applicants and their documents was intensified.<sup>204</sup> Immigration, customs, and visa personnel will now be held accountable for their visa-issuing and admissibility-screening decisions. Their decisions depend on the quality, timeliness, and currency of shared intelligence and law enforcement information. Intelligence and law enforcement entities should share in the successes and failures of visa and admission decisions.<sup>205</sup>

Terrorists applying for visas and requesting entry will encounter better trained immigration, visa, and customs personnel who are newly anointed counterterrorism officials. The possibility of being identified and intercepted by officials who enforce immigration, visa, and custom law and policy may deter terrorists and prevent their

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<sup>204</sup> Vaughan, 6-11.

<sup>205</sup> Ewing, 2.

entry.<sup>206</sup> Terrorists desiring to travel to the U.S. may opt to not take the risks associated with the many points of contact that occur with trained immigration, visa, and customers personnel (i.e., applying for visas, requesting entry, and registering with ICE and educational institutions).<sup>207</sup>

The missions of potential terrorists will be disrupted if they do not initiate the travel process. Trained customs officials may frustrate the travel plans of terrorists and render their exploitation of legal, nonimmigrant methods unsuccessful by refusing to issue visas to applicants. For example, 2005 nonimmigrant visa refusal rates convey that consular officials who screen applicants with counterterror lenses and a security focus can apply higher levels of scrutiny. Out of a total of 7,358,122 nonimmigrant visa applications received in 2005, 1,969,185 applications were refused.<sup>208</sup> Terrorist grounds resulted in 104 refusals.<sup>209</sup> Although the refusal rate for terrorist grounds comprises a small percentage of the total number of refusals, every refusal is noteworthy and signifies one less terrorist entry and one averted terrorist attack. One only point out that 19 hijackers caused enormous devastation on 9/11. Continuing to track and document rates of and grounds for refusal is critical. This data validates the effectiveness of consular training and trained officials' ability to prevent terrorist entry. Refusal rates and rationale data was not collected in 2001 or 2002. 2003 was the first year refusal rate data was compiled.<sup>210</sup> 2005 was the first year grounds for refusal data was documented.<sup>211</sup>

Training is very much an internal process. Therefore, it is not surprising that organizations, especially the newly established DHS organizations, would not publicize their training efforts, or lack thereof, because validating training's mitigation effects on

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<sup>206</sup> 9/11 and Terrorist Travel, 145 and 149.

<sup>207</sup> Meissner, et al., "Immigration and America's Future: A New Chapter," 62-63.

<sup>208</sup> U.S. Department of State Bureau of Consular Affairs, "Nonimmigrant Visa Workload Fiscal Year 2005," 2.

<sup>209</sup> U.S. Department of State Bureau of Consular Affairs, "Table XX, Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2005," *Report of the Visa Office*, Visa Statistics, <http://travel.state.gov/pdf/FY05tableXX.pdf> (accessed 10 November 2006), 1.

<sup>210</sup> U.S. Department of State Bureau of Consular Affairs, *Report of the Visa Office*, Visa Statistics, [http://travel.state.gov/visa/frvi/statistics/statistics\\_1476.html](http://travel.state.gov/visa/frvi/statistics/statistics_1476.html) (accessed 10 November 2006), 1.

<sup>211</sup> U.S. Department of State Bureau of Consular Affairs, "Table XX, Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2005," 1.

terrorism is a complex challenge for leadership. Training just does not carry the fire power and prestige for border security that the deployment of National Guard troops to the border engenders. One source attempts to fill this void: GAO Report, “Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing.”<sup>212</sup>

The GAO reports on Department of State visa processes and procedures, staffing, and counterterrorism training of consular officers. The study is an extension of a 2002 GAO study and assesses progress in implementing changes to the visa process since 2002. The Department of State increased hiring of consular officers and modified consular training by giving it a counterterrorism focus.<sup>213</sup> GAO recommended that the Secretaries of State and Homeland Security: “ensure that consular sections have the necessary tools to enhance national security and promote legitimate travel, including effective human resources and training.”<sup>214</sup> The GAO report did not provide hard evidence linking training program enhancements to preventing terrorists from traveling to or entering the U.S. Again, consular rates of and terrorist grounds for nonimmigrant visa refusal serve as the best measure to gauge the effectiveness of consular training and the ability of consular officials to prevent terrorist entry.

Consular officers overseas are empowered by the comparative advantage they leverage as the first line of defense in the “away game.” By virtue of their distant locations, they can effectively stop terrorists from entering the U.S. by denying them visas and preventing them from traveling to the U.S. homeland. They must have the most current, comprehensive training programs to identify and intercept terrorists attempting to travel to the U.S. Distance is a powerful buffer against terrorist attacks, and trained consular officers are integral to enforcing this critical U.S. buffer zone. Regardless of

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<sup>212</sup> “Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing,” *Government Accountability Office Report to Congressional Committees*, September 2005, <http://www.gao.gov/new.items/d05859.pdf> (accessed 10 April 2006), Highlights and 1. In 2002, the GAO recommended four actions to strengthen the visa process as an antiterrorism tool. They are as follows: 1) Establish a clear policy on the priority attached to addressing national security concerns through the visa process, 2) Create more comprehensive, risk-based guidelines and standards on how consular officers should use the visa process as a screen against potential terrorists, 3) Perform a fundamental reassessment of staffing and language skill requirements for visa operations, and 4) Revamp and expand consular training courses to place more emphasis on detecting potential terrorists.

<sup>213</sup> *Ibid.*, 3.

<sup>214</sup> *Ibid.*, 3.

location or distance, all immigration, visa, and customs officials have an ever-increasing role to play in protecting the U.S. against terrorist entrance. Their training must be current, frequent, validated, and publicized. Without proper training, other countermeasures that are utilized by these officials (i.e., SEVIS and NSEERS) will be less effective in mitigating terrorist entrance into the U.S.<sup>215</sup>

**Step 4: What other risks does the security solution cause?**

Training is the most benign security solution and does not carry with it substantial risks. Trained immigration, visa, and customs personnel may cause risks for legitimate travelers who must apply for visas and request admission into the U.S.<sup>216</sup> By scrutinizing applicants and their documents for indications of terrorism/terrorist ties, consular officials, border inspectors, and immigration enforcement personnel might also frustrate the travel of well-intentioned and valid travelers. Counterterrorism trained and focused personnel may also miss opportunities to identify and intercept illegal aliens, known criminals, intending immigrants, and drug smugglers when most of their attention, time, and effort is devoted to rooting out terrorists. Since training and guidance programs must be developed and updated with current and shared intelligence and law enforcement information, risks of compromising sensitive information, sources, and methods of collection are evident. The possibility of such sensitive information getting into unauthorized hands is a valid concern.<sup>217</sup> There are also certain risks that frustrate training and guidance efforts. The literature shows that there is a tendency for the U.S. to increase the number of bureaucratic organizations, laws and policies, and personnel. However, little regard is paid to the training of recently-hired or incumbent personnel who comprise the newly-formed organizations. The personnel receive insufficient training in current laws and policies.<sup>218</sup>

These personnel must be empowered with technology and databases that are utilized, shared, and monitored. With the resources that have been allocated to the immigration, visa, and customs systems--the first line of defense--the U.S. must ensure

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<sup>215</sup> B. Cooper, 1.

<sup>216</sup> "Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing," 1.

<sup>217</sup> *9/11 and Terrorist Travel*, 85.

<sup>218</sup> *Ibid.*, 165.

the most important resource—the people--on the front line of the first line of defense are trained to follow the already established law and policy.<sup>219</sup> To make the training effective, complex immigration and visa law and policies demand reform and simplification. Realistic, simpler immigration and visa policy are important to enhance personnel understanding, application, and enforcement.<sup>220</sup> The complexity of the laws is compounded by their sheer numbers. Immigration related border security legislation in the 109<sup>th</sup> Congress totaled 53.<sup>221</sup>

#### **Step 5: What trade-offs does the security solution require?**

The exponential benefits of implementing training and additional guidance initiatives such as consular training program enhancements designed to prevent terrorist entry into the U.S. far outweigh their relatively low economic, social, and political costs. To reiterate, out of a total of 7,358,122 nonimmigrant visa applications received in 2005, 1,969,185 applications were refused. 104 of the applications were refused on grounds of terrorism.<sup>222</sup> The refusals on terrorist grounds could be attributed to the new counterterrorism focus and training of consular officials. Developing and implementing training and guidance initiatives cost time and effort. For example, the duration of the State Department's post-9/11 formal consular course (ConGen) is now 31 days.<sup>223</sup> The monetary and social costs are relatively minimal. What can be logically concluded is that training accounts for a relatively small percentage of an organization's overall operating budget. The GAO report on consular training program enhancements does not provide overall figures on the costs to implement the specific initiatives.<sup>224</sup> General training resource allocation data is reported in the Department of State's FY 2007 budget. The Department of State has allocated \$105,062,000 of its FY 2007 \$9.504 billion request for

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<sup>219</sup> O'Hanlon, et al., *Protecting the American Homeland*, 14.

<sup>220</sup> Vina, 3.

<sup>221</sup> Blas Nunez-Neto and Cheryl Beaver, "Immigration Related Border Security Legislation in the 109<sup>th</sup> Congress," *CRS Report for Congress*, 3 April 2005, [http://wwwc.house.gov/case/crs\\_reports/Border%20Security.pdf](http://wwwc.house.gov/case/crs_reports/Border%20Security.pdf) (accessed 5 September 2006), 17-19.

<sup>222</sup> U.S. Department of State Bureau of Consular Affairs, "Nonimmigrant Visa Workload Fiscal Year 2005," 2.

<sup>223</sup> *9/11 and Terrorist Travel*, 150.

<sup>224</sup> "Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing," 1.



training services. \$5,249,000 of the \$105,062,000 is to fund consular training.<sup>225</sup> Based on the literature and according to the training advocates, there are few, if any, disadvantages and critics of training and guidance initiatives and efforts.

Training is such a fundamental requirement for the success and effectiveness of any bureaucratic organization. Training's trade-offs are generally accepted, and its costs are considered "sunk." Training and additional guidance are important and necessary basic building blocks of U.S. immigration, visa, and customs counterterrorism efforts. The staff report on *9/11 and Terrorist Travel* was the first of its kind to analyze the threat posed by and vulnerabilities of terrorist travel. The study emphasized the importance of trained immigration, visa, and customs officials who follow and enforce the rules. Doris Meissner, former Commissioner of the INS from 1993-2000, corroborates this claim: "What can be done is to better safeguard validity and procedures ....what we must do is insist that U.S. immigration rules—all of them—do matter and take steps to make them work properly."<sup>226</sup>

Following the rules is most effective when officials have a solid knowledge base, practical experience, and even intuitive talents. A solid knowledge base can be developed with sustained, updated training and guidance. A trade-off is that updates based on current, shared intelligence and law enforcement information will always be required given the ever changing nature of terrorist travel/mobility. As terrorists change their trends, techniques, tactics, and patterns, concurrent modifications should occur in training and guidance curricula and programs. Terrorist organizations, like the terrorists themselves, are learning and adaptive entities:

Al Qaeda has shown a rare diligence and capacity to comply with the laws, or at least to appear to comply with them. For example, there were indications in the early 1990s that terrorists were trying to use the asylum system to gain entry to the United States. When the U.S. Government

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<sup>225</sup> U.S. Department of State, "The Budget in Brief: Fiscal Year 2007," <http://www.state.gov/documents/organization/60410.pdf> (accessed 15 November 2006), 2, 18, and 54

<sup>226</sup> Doris Meissner, "After the Attacks: Protecting Borders and Liberties," *Carnegie Endowment for International Peace Policy Brief* 8, November 2001, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=846&prog=zgp> (accessed 8 November 2005), 7.

became aware of this and started detaining asylum applicants who were suspected terrorists, the terrorists switched their tactics and began using tourist and student visas.<sup>227</sup>

## 2. SEVIS

### Step 3: How well does the security solution mitigate the risk?

SEVIS is another critical counterterror measure that may prevent terrorists from entering and attacking the U.S. SEVIS is the political response to security concerns over foreign students dating back to 1972. SEVIS automated an existing manual data collection process and became operational for all incoming foreign students on 15 February 2003.<sup>228</sup> George Borjas informs that in the wake of 9/11 the issue that raised counterterrorism and homeland security red flags was that foreign students may pose a physical threat to the U.S.<sup>229</sup> Doris Meissner relates why students are a homeland security concern. Even though foreign students and exchange visitors comprise a small subset of temporary/nonimmigrant visitors, they have always been a security interest because their student status enables them to remain in-country for several years. Because of their selected fields of study, they may also have access to technology and training that could be used for nefarious purposes.<sup>230</sup>

Janice Kephart links terrorist exploitation of legal immigration and student status and even recommends the first key recommendation—training—to counter such terrorist travel methods. During a 30 August 2005 National Press Club news conference featuring the Center for Immigration Studies, Kephart noted that such legal immigration and student status abuses will likely continue unless the U.S. designs “a system that can snuff out the abuse with better information, better technology, better legal and policy guidelines, and better training.”<sup>231</sup> Trained immigration, visa, and customs officials have

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<sup>227</sup> Margaret D. Stock and Benjamin Johnson, “The Lessons of 9/11: A Failure of Intelligence, Not Immigration Law,” *Immigration Policy Focus* 2, no. 3, December 2003, <http://www.aif.org/ipc/ipf121203.asp> (accessed 12 September 2005), 7.

<sup>228</sup> Siskin, “Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS),” 1.

<sup>229</sup> George J. Borjas, “Rethinking Foreign Students: A Question of the National Interest,” *Available through the website of Institute of International Education, National Review*, 17 June 2002, <http://opendoors.iienet.network/?p=29516> (accessed 11 August 2006), 15.

<sup>230</sup> Meissner, “After the Attacks: Protecting Borders and Liberties,” 6.

<sup>231</sup> Janice Kephart, “Release of Two Research Papers,” The National Press Club, Remarks Before the Center for Immigration Studies News Conference, 30 August 2005, 3.

one such system that can “snuff out” abuses by foreign students and exchange visitors. The system is SEVIS.<sup>232</sup> *9/11 and Terrorist Travel* argues,

when the September 11 hijackers began entering the United States in 2000 to attend flight school, there was no student tracking system available. If there had been immigration authorities might well have been alerted to the fact that Mohamed Atta, the plan’s ringleader, had made false statements about his student status and therefore could have been denied entry into the United States.<sup>233</sup>

Post-9/11, SEVIS can have “deterrent” and “disruptive” effects.<sup>234</sup> SEVIS may deter terrorists from exploiting the foreign student and exchange visitor visa program. SEVIS may disrupt terrorist operations by denying them pre-9/11 opportunities to remain in-country for several years to plan, plot, and execute attacks under the guise of student status. Potential terrorists will be accountable to the Departments of State and Homeland Security and educational institutions. Their names and addresses will be placed in a database, and any deviations from their intended educational plans and/or any violations of student status will be recognized. SEVIS targets a subset of the temporary/nonimmigrant visitors who may violate legal student status. SEVIS identifies students and may identify potential terrorists who violate the terms of their student visas.<sup>235</sup> Because of SEVIS requirements, terrorists may reconsider using this popular pre-9/11 tactic to gain entrance into the U.S. The Department of State, DHS, and educational institutions will hold potential terrorists accountable for their acceptance to and attendance at educational institutions. By using databases to include SEVIS, consular officials in FY 2005 identified 333 potential nonimmigrants as inadmissible based on security and terrorist grounds.<sup>236</sup>

The pre-9/11 and the nineteen 9/11 terrorists have showed a propensity to violate the terms of their student visas. Therefore, terrorists may be identified through the

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<sup>232</sup> SEVIS By The Numbers, General Statistics, 31 March 2006, <http://www.ice.gov/sevis/numbers/index.htm> (accessed 17 November 2006), 1. The most current SEVIS statistics are as follows: SEVIS approved schools total 8,471; Active foreign students (F and M visa holders) total 611,581; Active exchange visitors (J visa holders) total 154,471.

<sup>233</sup> *9/11 and Terrorist Travel*, 100.

<sup>234</sup> *Ibid.*, 159.

<sup>235</sup> U.S. Department of Homeland Security Office of Inspector General, 6.

<sup>236</sup> Haddal, 5.

routine SEVIS identification of student visa violators. In 2003, 36,600 potential student violators were reported to ICE's Compliance Enforcement Unit (CEU). Of the 36,600 violators, more than 2,900 did not report to school or maintain a full course load or were suspended or expelled. Upon further examination, CEU referred 1,591 cases to the field for additional investigation. Investigations netted 155 arrests.<sup>237</sup>

#### **Step 4: What other risks does the security solution cause?**

Educational institutions have other more pressing concerns than that of U.S. homeland security. SEVIS causes educational institutions and foreign students and exchange visitors to incur risks. Institutions may constrain the implementation and affect the overall effectiveness of SEVIS. The success and effectiveness of a foreign student tracking/monitoring system is dependent upon the educational community's cooperation and support. The educational community objected to SEVIS on the grounds that it is "burdensome and intrusive." Since 9/11, most of these objections have been quelled. Meissner argues, "Universal implementation needs to proceed quickly."<sup>238</sup>

Some of the complaints lodged by the educational community and foreign students cause risks that impede the effective implementation of SEVIS. These complaints include: incurred management responsibilities of SEVIS, technical difficulties and database confidentiality, reporting burdens, fee collection requirements, and delays in visa issuance. Prior to 9/11, some university officials contended that they would have to take on former-INS enforcement agent duties and responsibilities. They also expressed concern over database integrity and privacy/confidentiality of student records.<sup>239</sup> Due to the events of 9/11, a broad consensus developed among the educational community. The educational community rallied in support of a foreign student tracking system. DHS was criticized for not providing training to education officials charged with administering SEVIS. Nonetheless, ICE confirmed that SEVIS

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<sup>237</sup> U.S. Immigration and Customs Enforcement, "SEVIS – Year Two," Fact Sheet, 27 August 2004, <http://www.ice.gov/pi/news/factsheets/082704sevisFS.htm> (accessed 10 November 2006), 1.

<sup>238</sup> Meissner, "After the Attacks: Protecting Borders and Liberties," 6.

<sup>239</sup> Siskin, "Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)," 1.

should be operational for all incoming students. All continuing foreign students have been entered in SEVIS as of August 2003.<sup>240</sup>

SEVIS not only affects the educational institutions and students, but it also invites financial risks for the U.S. The Independent Task Force on Immigration and America's Future asserts, "For the past 50 years, the United States has comfortably enjoyed its position as the top destination for international students." As the top destination, the U.S. had profited from the \$30 billion per year higher education market.<sup>241</sup> The Task Force elaborates, "Indeed, educating foreign students may be one of the best long-term investments the United States makes in pursuit of international peace and prosperity, while also bringing billions of dollars into the U.S. economy -- \$13.3 billion in the 2004-2005 school year."<sup>242</sup> The travel industry has also chimed in, noting the impact and importance of international students to the U.S. economy. In a January 2006 Migration Policy Institute report, Jeanne Batalova cites a 2005 Travel Industry Association of America study:

The United States is the most profitable tourist and education destinations in the world. For example, in 2004, international tourists spent about \$94 billion in the United States, and international students contributed another \$12.9 billion dollars in tuition and living expenses.<sup>243</sup>

A global competition for talent especially in the fields of science, technology, engineering, and mathematics (STEM) has bumped the U.S. from its exalted position. Some in the educational industry believe SEVIS may continue to hasten the U.S. descent from the top position.<sup>244</sup> A Migration Policy Institute paper cites reports by the GAO

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<sup>240</sup> Haddal, 8. "New concerns are arising with respect to whether increased security is costing the U.S. the ability to attract the number and quality of foreign students its higher education demands. The fields of science, technology, engineering and mathematics (STEM) have become particularly dependent upon foreign students, and these fields hold a top priority with most research institutions. Furthermore, the U.S. economy has shown a high demand for the skill-sets produced in these fields of study, and the STEM provides a crucial link between the academic community and the labor market. Consequently, with the security concerns largely addressed, many groups in higher education and the private sector are seeking to develop pathways to immigration for foreign students (i.e., recruitment and incentive programs)."

<sup>241</sup> Meissner, et al., "Immigration and America's Future: A New Chapter," 9. "the United State's share of international students has fallen since the mid-1990s, while Australia, Japan, New Zealand, and several European countries have seen large growth in their shares."

<sup>242</sup> Ibid., 17.

<sup>243</sup> Batalova, 3.

<sup>244</sup> Meissner, et al., "Immigration and America's Future: A New Chapter," 9. Haddal explains concerns regarding the U.S. the loss of STEM field talent. Haddal, 8.

and the Institute of International Education (IIE) that disagree with this assertion: “the decline in the number of international students is not due to SEVIS.”<sup>245</sup> They justifiably and rightly contend that the decline is attributed to real/perceived difficulties in obtaining student visas, rising U.S. tuitions, aggressive recruiting by other English-speaking nations, and perceptions that the U.S. is closing its doors.<sup>246</sup>

### **Step 5: What trade-offs does the security solution require?**

In addition to the educational community and foreign students, other critics have questioned the effectiveness of and funding for SEVIS. These critics have pointed to the trade-offs/costs of SEVIS. Alison Siskin reports, “Through SEVIS, DHS should be able to identify students who have violated the terms of their visas; however, some question whether DHS has the staff to locate all the student violators, and whether it is a beneficial use of DHS resources to do so.”<sup>247</sup> Such constructive criticism and trade-off arguments have been muted. High-profile incidents that polish the image and highlight the effectiveness of SEVIS will justify its continued implementation. SEVIS security measures have been credited with the successful detection of several unaccounted foreign students who were in violation of the terms of their visas. In the summer of 2006, eleven Egyptian student visa holders were permitted entrance at U.S. ports of entry. However, they did not attend classes nor did they report to the appropriate Montana State University SEVIS administrators. Following SEVIS requirements, university officials reported their absence to DHS. DHS located and apprehended six of the eleven foreign students and continued to investigate the whereabouts of the remaining five. The outcome of such high-profile tracking identifications and apprehensions is that “Incidents such as this one are generally accepted as indicators that SEVIS is working as intended.”<sup>248</sup>

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<sup>245</sup> Randa A. Kayyali, “The People Perceived as a Threat to Security: Arab Americans Since September 11,” Migration Policy Institute Migration Information Source, <http://www.migrationinformation.org/Feature/display.cfm?id=409> (accessed 20 November 2006), 4.

<sup>246</sup> Ibid., 4

<sup>247</sup> Siskin, “Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS),” 5-7.

<sup>248</sup> Haddal, 8. “Following the full implementation of SEVIS in 2003, legislative activity over foreign student security has remained relatively calm.” Through subsequent investigation, the foreign students were found to not have ties to terrorism.

The administrative and maintenance costs of SEVIS are covered by fees paid by those it is designed to track. SEVIS is a self-funded, fee-based program. Its operating budget is derived from fees. Foreign students and exchange visitors are required to pay a \$100 fee prior to obtaining their visas. This fee requirement became effective on 1 September 2004.<sup>249</sup> That being said, SEVIS does serve as a necessary countermeasure that focuses efforts on a subset of the temporary/nonimmigrant population (foreign students and exchange visitors) and a community (educational) that demonstrated the potential to violate the rules pre-9/11. Michael O'Hanlon contends that SEVIS is a useful measure to monitor people and identify student visa overstayers: "(SEVIS) now appears to be functioning quite well in helping track those foreigners in the United States on student visas."<sup>250</sup> This same, routine monitoring function may also identify and intercept terrorists. SEVIS is experiencing growing pains trying to establish new procedures with regard to a resistant educational community with well-established business practices and different motivations and priorities.<sup>251</sup> SEVIS is a countermeasure that deserves its place amongst the prioritized and funded countermeasures. Most of the challenges of and complaints about SEVIS deal mostly with management, administrative, and operational issues.

Incurred management responsibilities of SEVIS, technical difficulties and database integrity, reporting burdens, fee collection requirements, and delays in visa issuance demand attention, analysis, and resolution. Better coordination and communication between DHS and the educational community can help resolve responsibility, requirement, burden, and delay issues and concerns. An example of such coordination and communication efforts is the DHS establishment of a SEVIS Response Team to work with inspectors, schools, and students to resolve issues with respect to student admissions to the U.S.<sup>252</sup> SEVIS program managers also offer opportunities for

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<sup>249</sup> U.S. Immigration and Customs Enforcement, "SEVIS – Year Two," 2. The \$100 fee requirement applies to F, J, and M nonimmigrant student classifications. An exception to the rule pertains to certain J-1 exchange visitor programs which may pay a reduced fee of \$35 or be fee-exempt.

<sup>250</sup> O'Hanlon, "BORDER PROTECTION: Testimony of Michael O'Hanlon, coauthor of *Protecting the Homeland 2006/2007*, June 28," 2.

<sup>251</sup> Borjas, 3.

<sup>252</sup> Siskin, "Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)," 6. In regards to SEVIS, DHS has been praised for its responsiveness to issues raised by the educational community.

key SEVIS stakeholders (i.e., Department of State, DHS, and educational institutions/community) to provide feedback on SEVIS implementation operation, performance, and suggested improvements. This SEVIS outreach program involves bi-weekly stakeholder conference calls to provide updates and solicit feedback.<sup>253</sup> The positive results of such cooperative efforts should be publicized and distributed to overseas Consular Affairs posts, to educational institutions, and to the prospective international student community. Many of the issues and concerns with SEVIS could be quelled by developing a better implementation plan which includes an organized marketing/publicity plan which clearly, periodically, and objectively presents the SEVIS costs/benefits, advantages/disadvantages, progress/status, success/failures, and effectiveness/ineffectiveness of SEVIS. None of the sources used to draft this thesis advocate the scrapping of SEVIS. SEVIS offers the U.S. a way to routinely enforce immigration law and adds integrity to the international student nonimmigrant visa program. SEVIS adds a much needed element of compliance to the foreign student and exchange visitor tracking. Its terrorist deterrent and disruptive effects are also valuable. Just because the implementation and delivery of a system is less than optimal, that should not negate the basic concept, the inherent benefits of the system, or its lessons learned: “most observers view the SEVIS system as adequate for monitoring students and alerting authorities to suspicious behavior or unlawful movement.”<sup>254</sup>

### **3. NSEERS**

#### **Step 3: How well does the security solution mitigate the risk?**

In addition to the 9/11 Commission, almost all sources agree on the importance of an entry-exit system and its tremendous terrorist travel/mobility mitigation potential. As with training and SEVIS, several post-9/11 legislative mandates have directed its implementation. Similar to training and SEVIS, the concept of NSEERS has proven its worth based on the hard lessons learned from 9/11 and about its perpetrators.<sup>255</sup> Admittedly, NSEERS does have its share of challenges; however, the absence of an

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<sup>253</sup> U.S. Immigration and Customs Enforcement, “SEVIS – Year Two,” 2. In June 2004, GAO issued a report on the performance of SEVIS. GAO noted that SEVIS’ system performance had improved. The E-Gov Institute awarded SEVIS a Pioneer Award in recognition of SEVIS’ improved operations and streamlined processes.

<sup>254</sup> Haddal, 8.

<sup>255</sup> *9/11 and Terrorist Travel*, 157.



entry-exit system is an omission with grave homeland security implications. An entry-exit system is a countermeasure that provides a basic sense of border control. Not knowing who is coming into/going out of the U.S. or who has violated the terms of their visas is a risk that is no longer desirable nor acceptable in the post-9/11 security environment.

Along with trained personnel and SEVIS, NSEERS can assist in the routine enforcement of U.S. immigration and visa law and policy. NSEERS identifies visitors who have violated the terms of their temporary nonimmigrant visas. It is a tracking tool that can support overall overstay identification efforts by tackling the endemic problem of overstays which still remains unresolved. True estimates of the number of nonimmigrant overstays are not available. An attempt to quantify this unknown has produced the following: estimates range from 31% to 57% of the unauthorized population.<sup>256</sup>

Based on feedback and previous assessments, NSEERS 30-day and annual re-registration requirements were suspended on 2 December 2003. DHS reasoned that resources no longer used for non-value added re-registration processes would be reallocated to NSEERS improvements. The original intent of NSEERS remained intact by continuing two procedures: 1) registration procedures at ports of entry to include fingerprinting, photographing, and registering aliens, and 2) registration procedures at points of departure. DHS upheld the importance and benefits of NSEERS: “Special registration of aliens has, consistent with the program’s intent, provided important law enforcement benefits, which have included the identification of a number of alien terrorists and criminals.”<sup>257</sup>

The 9/11 Commission contends that NSEERS had both deterrent and disruptive effects. Would-be terrorists were sent a clear signal that immigration law and policies would be enforced.<sup>258</sup> 9/11 and Terrorist travel also argues, “NSEERS had a *disruptive effect* because it ‘forc[ed] would be terrorists to comply with the terms and conditions of their admissions to the U.S. or run the risk of being removed.’” The disruptive effect adds requirements, stress, and pressure to the “job” of a terrorist, thereby, making their

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<sup>256</sup> Ruth Ellen Wasem, “Nonimmigrant Overstays: Brief Synthesis of the Issue,” 1.

<sup>257</sup> Bruno, 11.

<sup>258</sup> 9/11 and Terrorist Travel, 159.

operations more difficult. The disruptive effect can contribute to the disruption of the terrorist mission.<sup>259</sup> Soon after the implementation of NSEERS, immigration authorities fingerprinted, photographed, and questioned 80,000 men.<sup>260</sup> The 9/11 Commission reports the most current, publicized NSEERS statistics that relate to identifying and stopping terrorists. DHS revealed 11 out of the approximately 140,000 total registrants had terrorist affiliations.<sup>261</sup> Therefore, 11 immigration law violators and potentially harmful terrorists and their operations may have been disrupted.

#### **Step 4: What other risks does the security solution cause?**

NSEERS causes risks for a subset of the temporary/nonimmigrant population subject to NSEERS registration requirements. NSEERS has been criticized for targeting Arab and Muslim foreign nationals for special registration requirements. Susan Martin and Philip Martin cite a Migration Policy Institute report: “the Special Registration program implicitly assumes that all citizens of the stated countries are suspected of participating in terrorist activities.”<sup>262</sup> The consequence of this perception/reality is the risk of alienating potential intelligence sources and a cooperative Arab/Muslim community. This risk perception is based on civil liberties and profiling concerns regarding the selective enforcement of immigration based on nationality. When accepted and implemented, nationality-based enforcement programs may have spillover effects for targeted segments of the nonimmigrant subset and the U.S. population.<sup>263</sup> A 2003 Migration Policy Institute report on post-9/11 domestic security and civil liberties challenges informs that hate crimes aimed in the U.S. at Muslims post-9/11 rose,

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<sup>259</sup> *9/11 and Terrorist Travel*, 159.

<sup>260</sup> Kayyali, 4.

<sup>261</sup> *9/11 and Terrorist Travel*, 158. Aliens who fail to register their departure with NSEERS or fail to comply with DHS re-registration requests are referred to the ICE’s Compliance Enforcement Unit (CEU). NSEERS referred an average of 358 leads per week to CEU in 2004. U.S. Department of Homeland Security Office of Inspector General, Office of Inspections and Special Reviews, 9.

<sup>262</sup> Martin and Martin, 334. “NSEERS address and reporting rules have been controversial. Supporters portray the entry-exit registration as a needed means of reducing the nation’s vulnerability to future attacks....Critics take issue with the system’s purported national security benefits, characterizing it as an inefficient and counter-productive approach that will create resentment of the U.S. in the Muslim and Arab world and will undermine international support for the U.S. war on terrorism. They describe it as a blatant example of racial and ethnic profiling, which, they maintain, runs counter to core democratic values.” Bruno, 10.

<sup>263</sup> Chishti, et al., “America’s Challenge: Domestic Security, Civil Liberties, and National Security Unity After September 11,” 13.

increasing more than 1,500 percent. Furthermore, employment discrimination against Muslim- and Arab-Americans and South Asians increased, resulting in the federal Equal Opportunity Commission receiving over 700 employment discrimination complaints in the 15 months after 9/11.<sup>264</sup> As with SEVIS, many of the civil liberty and profiling issues and concerns with NSEERS could be quelled by developing a better implementation plan which includes an organized publicity plan and establishes mediums for the targeted and affected Arab-Muslim community to provide feedback.

For example, the Migration Policy Institute report chronicles the President's visit to a Washington, D.C. mosque shortly after the events of 9/11. This visit had a profound impact on the Arab-Muslim community. Community and religious leaders viewed the gesture positively as not only a symbolic gesture but also acknowledged how it satisfies "a critical need for senior government officials to deliver sustained messages of inclusiveness, tolerance, and the value of diversity."<sup>265</sup> By opening the lines of communication and understanding, these opportunities offer NSEERS program managers to inform the Arab-Muslim community of NSEERS purpose, intent, operations, progress, and effectiveness. Arabs and Muslims can voice their concerns and provide feedback. US-VISIT will assuage fears of targeting the Arab/Muslim subgroup, as it will track all temporary/nonimmigrant visitors. The 9/11 Commission informs that DHS plans to have the functions of NSEERS absorbed by the more comprehensive, integrated US-VISIT database "which captures the fingerprints and photographs of nonimmigrant visa holders upon entry and exit—[and] 'will ultimately subsume the functions of the NSEERS program.'"<sup>266</sup> That being the case, an additional implementation and effectiveness assessment of US-VISIT would be required to determine its prioritization and funding. This thesis does not cover such as assessment.

#### **Step 5: What trade-offs does the security solution require?**

NSEERS requires the following trade-off: it is not a foolproof entry-exit tracking system. Terrorists may take advantage of a loophole in airport departure registrations. NSEERS procedures do not account for inspectors' observing departures. For example,

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<sup>264</sup> Chishti, et al., 14.

<sup>265</sup> Ibid., 14.

<sup>266</sup> *9/11 and Terrorist Travel*, 158.

when leaving the U.S. via air, departure registration takes place at a designated location in the airport, not at airport departure gates. By not escorting registrants to their respective departure gate, there is no guarantee that the registrant actually left.<sup>267</sup> Terrorists who travel by land, sea, or rail can also take advantage of this loophole. In reference to NSEERS program costs, the Homeland Security Department FY 2007 appropriations lumps funding for NSEERS together with other ICE programs such as: US-VISIT and investigations/non-administration funding for SEVIS. \$1,457 million was requested in the President's budget for the ICE domestic operations for NSEERS, US-VISIT, and SEVIS.<sup>268</sup>

All three countermeasures have trade-offs, or costs, associated with them such as: time, effort, monetary, social, liberty, privacy, time, and convenience. Other trade-offs/costs are caused by the economic fallout associated with the loss of business and international confidence. The U.S. loses visitors, workers, and students and their dollars and talent. U.S. must bear trade-offs/costs that countermeasures require. Assessing the value of countermeasures is not an absolute science. When making prioritization and allocation decisions, there has to be an acceptance of some level of associated trade-offs/costs. *9/11 and Terrorist Travel* asserts,

It is difficult to gauge the counterterrorism benefit from these programs because information on how they have affected terrorists is not always easy to come by....Ultimately, it is difficult to measure success of operations whose goals include deterrence...The routine enforcement of laws, including those not specifically related to terrorism, can therefore raise obstacles for and in some cases have a deterrent effect on individuals intending to commit terrorist attacks.<sup>269</sup>

Trained personnel who use SEVIS and NSEERS can assist in the routine enforcement of the laws. These countermeasures can track temporary/nonimmigrant visitors, identify and intercept violators/overstayers, and they can hopefully deter potential terrorists in the process. When coupled with intelligence and law enforcement information sharing, trained personnel, SEVIS, and NSEERS are "smart" U.S. homeland

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<sup>267</sup> Kingsbury, 12.

<sup>268</sup> Jennifer E. Lake and Blas Nunez-Neto, "Homeland Security Appropriations," 10 May 2006, [http://www.usembassy.at/en/download/pdf/dhs\\_appopr.pdf](http://www.usembassy.at/en/download/pdf/dhs_appopr.pdf) (accessed 15 November 2006), 31.

<sup>269</sup> *9/11 and Terrorist Travel*, 159-160.

security investments. By leveraging the capabilities of SEVIS and NSEERS, trained immigration, visa, and customs officials can effectively track, monitor, and screen for nefarious legal visitors who have violated the terms of their visas.<sup>270</sup>

## **B. CONCLUSION**

The 9/11 Commission opens *9/11 and Terrorist Travel* with the following observations and recommendation:

It is perhaps obvious to state that terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country. Yet prior to September 11, while there were efforts to enhance border security, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal. Indeed, even after the 19 hijackers demonstrated the relative ease of obtaining a U.S. visa and gaining admission into the United States, border security still is not considered a cornerstone of national security policy. We believe, for reasons we discuss in the following pages, that it must be made one.<sup>271</sup>

In the five years that have passed since 9/11, there is no question that this 9/11 Commission recommendation has been acknowledged and heeded. Border security which encompasses immigration, visa, and customs systems has been made a cornerstone of national security. Border security concerns have infiltrated the counterterrorism dialogue and have impressed themselves on the collective domestic and international psyche of immigration policy and national security. One of the fact-based assumptions of this thesis contends that oftentimes illegal immigration concerns are conflated with national security. This is faulty logic. 9/11 fallout has prompted urgent claims to surface. Some claim that illegal immigration must be controlled because of the potential for terrorists to take advantage of weaknesses in U.S. immigration law, border control, and interior enforcement. They argue that these weaknesses and inefficiencies have enabled ~12 million illegal immigrants to circumvent and evade immigration, visa, and

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<sup>270</sup> Kingsbury, 14 and 16. “Terrorists who enter as legal visitors are hidden within the much larger populations of all legal visitors, overstays, and other illegals such as border crossers. Improved tracking could help counterterrorism investigators and prosecutors track them and prosecute them, particularly in cases in which suspicious individuals are placed on watch lists after they enter the country....Designing and implementing a viable and effective tracking system is a critical component of the nation’s domestic security and continues to be a DHS priority. Viewing our results in the context of our nation’s layered defense,...improvements in the tracking system must work together with other factors—such as intelligence, investigation, and information sharing—to help secure domestic security.”

<sup>271</sup> *9/11 and Terrorist Travel*, ix.

customs systems. The claim is predicated on fears that terrorists will innocuously blend in with the unauthorized immigrant flows and population. This claim presumes that terrorists will take the same calculated risks and have the same motivations and incentives as those braving the heat of and evading Border Patrol agents at the Southwest border. Ultimately, the unauthorized immigrant population must pay for the national security “collective good.”<sup>272</sup>

The presence of ~12 million unauthorized immigrants is being used as ammunition to tout national security concerns in the post-9/11 security environment. Yet, illegal immigrants are more of an economic and social concern, not a matter of counterterrorism national security. If an illegal immigrant were to perpetrate a terrorist attack, then the policies, prioritization, and funding to bolster the security of the Southwest border could be partly justified. By conflating illegal immigration and national security/terrorism, counterterror measure prioritization and resource allocation become skewed, as do the perceptions of counterterror measure/security solution implementation and assessment. The three security solutions used to counter terrorist entry are roped in with unsuccessful efforts to alleviate illegal immigration woes:

The nation’s attention is currently focused on illegal immigration, which colors people’s views about all aspects of immigration. Americans are deeply divided and conflicted in their opinions about whether immigration helps or hurts the country, and what policies should be implemented to combat illegal immigration.....Americans do not give the government high marks for managing immigration policy, especially border protection.<sup>273</sup>

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<sup>272</sup> Garcia, 2.

<sup>273</sup> Doris Meissner, et al., “Immigration and America’s Future: A New Chapter,” 27.

Consequently, this conflation has bred general border security “insecurity.”<sup>274</sup> Illegal immigration and U.S. labor demand and Mexico and Central and South America labor supplies should not be conflated with terrorism, homeland defense, and national security.<sup>275</sup>

Nevertheless, according to the findings of this thesis, any insecurity about the three counterterror measures/security solutions is over exaggerated at most and unfounded at best. Once given the counterterrorism focus that the 9/11 Commission and other immigration and national security experts have recommended, implementation was demanded, and assessments were available. Assessments such as this thesis offers are integral to not only research efforts but also to counterterror measure prioritization and resource allocation endeavors. The three key recommendations serve their purpose well and should be acknowledged and used to prevent terrorist entry. Their implementation and assessment was warranted even in the pre-9/11 security environment. The three security solutions would have been effective at contributing to the denial of terrorist entry pre-9/11. The three security solutions target legal, nonimmigrant, student travel patterns and methods typified by the nineteen 9/11 terrorists.<sup>276</sup>

Before the events of 9/11, nineteen terrorists took advantage of gaps/weaknesses in immigration, visa, and customs systems. Because of the gaps/weaknesses, they entered the U.S. and committed the attacks. Therefore, the 9/11 Commission prescribed three key policies to enhance the effectiveness of post-9/11 immigration, visa, and customs systems. Closing the gaps in these systems would require implementation of these recommendations as counterterrorism measures. Their value and effectiveness as counterterror measures will depend on their ability to stop terrorists from entering the U.S.

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<sup>274</sup> Ewing, 1.

<sup>275</sup> Ewing, 1. “Since 9/11, concern has mounted among policymakers and law-enforcement authorities that foreign terrorists affiliated with al Qaeda might use Mexico as a transit point to enter the United States, relying on the same people smuggling networks as undocumented immigrants and becoming lost in the large undocumented flow. Some lawmakers have voiced fears that terrorists might be among the growing number of undocumented non-Mexicans crossing the southern border, although these Other Than Mexicans (OTMs) come principally from Central and South America. There is no evidence this has happened...U.S. national security would be better served if undocumented labor migration were taken out of the border-security equation....[and if the U.S.]...cold focus more on finding terrorists and less on apprehending jobseekers.”

<sup>276</sup> Chishti, et al., “America’s Challenge: Domestic Security, Civil Liberties, and National Security Unity After September 11,” 12.

In assessing the ability of the recommendations to stop terrorists, it has been determined that all three recommendations have their costs/benefits, pros/cons, and opportunities/challenges. No counterterror measure is without its flaws. After assessing the three recommendations, it is evident that the U.S. has improved its pre-9/11 immigration, visa, customs, and border security systems. These systems may enable the U.S. to capitalize on opportunities to analyze and disrupt terrorist travel/mobility vulnerabilities in order to stop terrorists from entering the U.S. As counterterror measures, the key recommendations aid in the identification and interception of terrorists abroad, at the border, and in-county. Trained people who might have leveraged technological tools such as SEVIS and NSEERS may have prevented the 19 terrorists from committing the 9/11 attacks. The post-9/11 immigration, visa, and customs systems are more effective at mitigating the terrorist threat today than they were pre-9/11 simply because their gaps/weaknesses have been identified post-9/11.

Providing standardized operational training and additional guidance and maintaining a foreign student visa compliance system and a national entry-exit system are crucial counterterror measures that should receive the commensurate resource allocation. Their benefits far outweigh their minimal monetary and social costs. If the U.S. does not stop terrorists from entering the country and another terrorist attack occurs, the resource and trade-off costs of implementing, maintaining, and monitoring the three recommendations would still be justified. The continued implementation of these recommendations is validated in the post-9/11 environment. They cause tolerable risks and require acceptable trade-offs. They mitigate the terrorist threat by frustrating terrorist travel/mobility. When coupled with intelligence and law enforcement information sharing, they offer the U.S. opportunities to deny terrorist entrance into the U.S.

Continued implementation and periodic assessments of these recommendations will help to increase their effectiveness as counterterror measures designed to stop terrorist entrance and prevent terrorist attacks. Perhaps more time and some patience is needed, as only five years have passed since the events of 9/11. Implementing and assessing countermeasures take time. Assessments of implemented countermeasures are critical. Assessments ensure prioritization and resource allocation decisions are based on facts and not on purely political reactions and public fears. Assessments help



policymakers and officials to determine which countermeasures should be continued and funded and which ones should be discontinued and unfunded. Susan Ginsberg says it best:

In the new environment, there are too many new requirements and initiatives piled on top of one another that lack adequate and commensurate resources. Good ideas are not lacking in Washington, and the project of remaking national security to deal with terrorism has brought about an outpouring of contributions and initiatives. But even good ideas are badly timed if they do not allow earlier initiatives a chance to develop in stages—to mature, falter, recover, and make good on their promises.<sup>277</sup>

The three key recommendations should be given a chance to develop in stages. The recommendations should be given high priority as immigration, visa, customs, and border security systems counterterror measures. Priority should be placed and funds should be allocated where the security solutions can bolster the efforts of the away game and its key players. By beating terrorists at the away game, the home game win is more assured. “Pushing out” U.S. borders keeps the terrorists away and stops them from entering the U.S. Identifying and intercepting terrorists abroad makes the U.S. homeland secure. If the terrorists cannot travel, they cannot enter or attack the U.S. In the case of these three recommendations, the ends (effectiveness/ability to stop terrorists) justify their means (prioritization and resource allocation and costs/trade-offs).

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<sup>277</sup> Susan Ginsberg, “Countering Terrorist Mobility: Shaping an Operational Strategy,” Migration Policy Institute Report, February 2006, [http://www.migrationpolicy.org/pubs/MPI\\_TaskForce\\_Ginsburg.pdf](http://www.migrationpolicy.org/pubs/MPI_TaskForce_Ginsburg.pdf) (5 October 2006), 131.

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